

THE ACCOUNTS OF
EXECUTORS
ADMINISTRATORS
AND TRUSTEES

W. B. PHILLIPS F.C.A.



Stephenson

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THE ACCOUNTS OF EXECUTORS ADMINISTRATORS AND TRUSTEES

WITH A SUMMARY OF THE
LAW IN SO FAR AS IT
RELATES TO THE ACCOUNTS

BY

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SCHOOL OF COMMERCE, ON EXECUTORSHIP AND TRUST ACCOUNTS

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PREFACE

MOST people are called upon at some time to act for a relative or friend as executor or administrator, and as each office is primarily one of trust, involving serious responsibilities (both legal and moral), it is essential that all who undertake these positions should understand:—(1) the various duties they have to perform; (2) the law governing the subject; and (3) the way they should keep their accounts.

The object of this book is to deal with the subject under the last of these heads but, as a knowledge of the duties and law is necessary in order to account correctly, no work on the accounts would be of much use without the whole subject being dealt with. At the same time, only the main outlines of the law, so far as it affects the accounts, are given herein.

The Sixth Edition has been thoroughly revised and brought up to date.

It has been decided not to incorporate in the text anything but the names of cases. The citation references will be found in the Table of Cases at the beginning of the volume.

The author desires to acknowledge with thanks the assistance of Mr. J. D. Green, M.A., LL.M. (Cantab.), in revising the legal portions of the text.

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EXPLANATION OF REFERENCES TO CASES

L.R.	= Law Reports.
Ch.	= Chancery.
Ch. D.	= Chancery Division.
L.J.	= Law Journal Reports.
S.J.	= Solicitors' Journal.
W.N.	= Weekly Notes.
Q.B.	= Queen's Bench.
Mad.	= Maddock's Cases.
Ves.	= Vesey's Chancery Cases.
Russ.	= Russell's Cases in Chancery.
My. and Cr.	= Mylne and Craig, Cases in Chancery.
App. Ca.	= Appeal Cases.
Eq.	= Equity Reports.
L.T. Rep.	= Law Times Reports.
I.R.	= Irish Reports.
I.L.T.	= Irish Law Times.
Beav.	= Beaven.
De G. & Sm.	= De Gex & Smale.

THE ACCOUNTS OF EXECUTORS, ADMINISTRATORS AND TRUSTEES

PART I

CHAPTER I

WILLS

A WILL is a written instrument in which a person sets forth his intentions as to the disposal of his property after death.

No special form is needed, and a will does not require any stamp.

The following points are necessary to constitute a valid will, viz.—

(1) The will must be in writing.

(2) The language should be explicit enough to admit of but one interpretation of the wishes of deceased.

Essential
points of a
Will.

(3) The will must be signed by the person making it in the presence of *two* witnesses, who must sign (giving their addresses and descriptions) in his presence and the presence of each other. If the person making the will cannot write, he should execute it by a mark in the presence of two witnesses, or if he is too ill to write, he should direct some other person to sign it for him in his presence and the presence of the two witnesses. If the witnesses are unable to write, their marks

would be sufficient, but it is obvious that proper signatures are much less likely to be contested.

(4) The witnesses should be independent persons who will *not* benefit under the will. If a person (or the husband or wife of such person) named in the will to receive some benefit thereunder, signs as a witness, such benefit will be forfeited.

Although no special form is necessary to constitute a valid will, it cannot be sufficiently emphasized how essential it is that this important document should be drawn up by solicitors, thereby saving endless litigation and consequent heavy expenses.

Exception
to Wills in
writing.

The only exceptions to the rule that a will must be in writing are in the cases of soldiers on active service and sailors at sea, when wills made verbally before two or more witnesses are good. Such wills are termed **NUNCUPATIVE** wills.

All persons are able to make a will except—

Who cannot
make a
Will.

(1) Infants (i.e. persons under 21). Soldiers and sailors on active service can make a will, even though infants.

(2) Idiots and lunatics, unless they were sane and it can be proved that they were sane when they made the will, in which case the will would be valid.

If a person who has made a will either himself destroys it, or instructs someone else to destroy it in his presence, such will is revoked; but if anyone destroys it without his authority, the contents would hold good if satisfactory evidence of what it contained and how it was destroyed could be produced.

The making of a subsequent will, as a general rule, revokes all former wills. It is wise, however, to destroy all former wills, and to state in the last one that all former wills are revoked.

Perhaps the most important rule to remember as to when wills are revoked, and one which is most frequently overlooked, is the one that MARRIAGE REVOKES A WILL. Marriage
revokes a
Will.

Under the Law of Property Act, 1925, Sec. 177, a will may be made in contemplation of marriage, provided it is expressed to be so made.

Additions or alterations to the terms of a will may be made by what is called a codicil, which should be executed and witnessed in exactly the same manner as the will itself, annexed to the will and taken and read as part of it. Any number of codicils may be added to a will, although if it becomes necessary to make many alterations in the terms of the original will, it is wiser to have a fresh will drawn up and to destroy the old one. Codicil.

If the will covers more than one sheet, each sheet should be signed by the person making the will, and the witnesses, and the number of sheets which the will covers should be stated at the end.

Alterations, insertions, erasures and obliterations should all be initialed by the person making the will, and the witnesses.

There are no exceptions as to who can witness a will, but it is desirable that only responsible persons should do so, as, should they be called upon to give evidence as to the validity of the execution, such evidence might not be considered adequate if the witnesses had not realized at the time what they were doing.

In re Southerden; Adams v. Southerden, a testator who had made a will leaving everything to his wife in case she survived him, subsequently destroyed it, in the mistaken impression that, if she survived him, she would take all his property without his leaving a will. It was held that this was a case of dependent Dependent
relative
revocation.

relative revocation and that the contents of the destroyed will should be admitted to probate.

The doctrine of dependent relative revocation operates to validate a will which the testator has purported to revoke either under a mistaken supposition as to the existence of certain facts affecting the devolution of his estate after his death wholly or partially (as the case may be) intestate, or under a mistaken belief as to the operation on such devolution of the rules of law for the time being in force.

A recent case on this subject is *re Bunn; Durber v. Bunn*.

CHAPTER II

EXECUTORS AND ADMINISTRATORS

A TESTATOR is a person who dies having made a will. Testator.

An INTESTATE is a person who dies WITHOUT having made a will. Intestate.

A person may die partially intestate if his will does not deal with the whole of his estate, or if the gift of any part of the residue of his estate fails to operate. Partial intestacy.

EXECUTORS

An EXECUTOR is a person appointed by will to administer the estate in accordance with the terms of the will. Executor.

There are practically no exceptions as to who may be appointed an executor.

More than one executor may be appointed.

If a person named as executor does not wish to act, he may renounce, but he must do so before performing any act showing an intention to exercise the authority of an executor. Renunciation must be in writing and filed with the Court. Renunciation.

An EXECUTOR DE SON TORT (by his own wrong) is one who, without being appointed by will, intermeddles, by exercising the authority of an executor. Anyone who does this renders himself liable as an executor without having any of the protections of an executor (e.g. indemnification by the assets of the estate). It therefore behoves anyone to be very cautious before doing anything in connection with the affairs of a deceased person. Executor de son Tort.

Executor of
sole executor
continues.

If more than
one Exe-
cutor,
surviving
Executor
continues.

Adminis-
trator of
sole
Executor
does not
continue.

If a sole executor, having proved the will, dies before completing his duties, *his* executor would continue the work, as the office of executor being one of trust, it is assumed that the deceased person having entrusted his affairs to one person, would naturally wish that such person's own executor should continue the work of administering his affairs; but if more than one executor is appointed, on the death of one the surviving executors would continue the office. If a sole, or surviving, executor dies before completing his duties but without appointing an executor of his own estate, then his administrator does NOT continue the office, but a grant of ADMINISTRATION DE BONIS NON ADMINISTRATIS would be made to the next of kin of the original testator in the ordinary way.

ADMINISTRATORS

Adminis-
trators.

An administrator is a person appointed by the Court to administer the affairs—

(1) Of a person who dies intestate.

(2) Of a person who has left a will but has not named an executor therein; or where probate is renounced by all the executors or the sole executor.

(3) Of a person, when for any reason the administration of the affairs of deceased has not been completed.

The appointment of administrator is made by the Court on application, and in granting letters of administration the Court shall have regard to the rights of all persons interested in the real and personal estate of the deceased person, or the proceeds of sale thereof, and in particular, administration with the will annexed may be granted to a devisee or legatee; and in regard to land settled previously to the death of the deceased,

and not by his will, administration may be granted to the trustees of the settlement; and any such administration may be limited in any way the Court thinks fit. Provided that, where the deceased died wholly intestate as to his real and personal estate, administration shall—

(a) Unless by reason of the insolvency of the estate or other special circumstances, the Court thinks it expedient to grant administration to some other person, be granted to some one or more of the persons interested under this Act in the residuary estate of the deceased, if an application is made for the purpose.

(b) In regard to land settled previously to the death of the deceased, be granted to the trustees, if any, of the settlement if willing to act. (This does not apply to land settled on trust for sale, as to which the deceased is only in the position of a beneficiary, and no grant of representation is necessary.) (*Administration of Estates Act, 1925, Sec. 10.*)

Where there is more than one relative of equal degree of relationship entitled to the grant, the Court prefers to appoint a man of business to one not having business experience; and a man to a woman, but if it is desired that a certain person should have the office, and there are others of a nearer relationship, the renunciation of those having the prior right would have to be obtained.

If there are no next of kin the grant of letters of administration might be made: (1) to the Crown; (2) to a creditor; (3) in case of a foreigner, to a consul. But these appointments depend upon the particular circumstances of each case.

Where no
next of kin.

General
Grant of
Administra-
tion.

The appointment of an administrator of the estate of an **INTESTATE** is called a **GENERAL GRANT OF ADMINISTRATION**, and such an administrator's duty is to administer the estate according to the law of intestacy. (For the distribution of the estate of an intestate see Chapter VIII.)

Adminis-
trator cum
testamento
通称特種受。

Where a person dies leaving a will, but does not name an executor therein, or where an executor was appointed, but has renounced, or dies before proving the will, or for any reason is incapable of acting, the Court will appoint an **ADMINISTRATOR CUM TESTAMENTO ANNEXO** (with the will annexed) whose duty it will be to administer the estate in accordance with the terms of the will.

Adminis-
trator *de*
bonis non.

If a sole or surviving executor having proved the will dies without completing the work, and does not appoint an executor of his own will, or an administrator dies without completing the work, the Court will appoint an **ADMINISTRATOR DE BONIS NON ADMINISTRATIS** (of the goods not administered) whose duty would be to carry on to completion the work already commenced.

Limited
grants.

The foregoing are the principal grants of administration that are made, but the following limited grants are also made in the circumstances applicable to each case—

Adminis-
tration
Durante
Minore
Ætate.

ADMINISTRATION DURANTE MINORE ÆTATE (during infancy). Where a person named as sole executor, or entitled to administration, is under twenty-one, a grant is made to his guardian or other person whom the Court thinks fit, whose duty it is to carry on the work until the person entitled is of age.

Adminis-
tration
Durante
Dementia.

ADMINISTRATION DURANTE DEMENTIA (during lunacy). A grant made to a person, whose duty it

would be to carry on the administration during the lunacy of a sole executor or administrator.

ADMINISTRATION DURANTE ABSENTIA (during absence). This appointment is made where a sole executor or administrator is out of the jurisdiction of the Court for any considerable period, and the duty of anyone so appointed would be merely to carry on the work of administering the estate during the absence of the proper executor or administrator.

Adminis-
tration
*Durante
Absentia.*

ADMINISTRATION PENDENTE LITE (pending a lawsuit). An appointment made *pending* litigation touching the validity of a will.

Adminis-
tration
*Pendente
Lite.*

ADMINISTRATION AD LITEM (to a lawsuit). An appointment made where there is a lawsuit and the executor for some reason does not act, and it is necessary that deceased should be represented.

Adminis-
tration
Ad Litem.

ADMINISTRATION AD COLLIGENDA BONA DEFUNCTI (to collect the goods of deceased). A grant made to a person in default of anyone entitled to the grant; e.g. where an estate is of a perishable nature, and it is necessary that the property should be realized at once, and there are no next of kin forthcoming at the time, such a grant might be made to a creditor to protect the estate.

Adminis-
tration *Ad
colligenda
bona
defuncti.*

GRANTS CÆTERORUM are grants of administration made where there is more than one grant, e.g. where the first is limited to certain portions of the estate (for example an "ad colligenda, etc." grant to a creditor, and a further grant for the remainder to the next of kin).

*Cæterorum
Grants.*

In future the trustees of settled land must obtain their own limited grant whether or not the deceased died intestate.

GENERALLY

A person named as executor is not bound either to accept or renounce at once unless he is a sole executor. Provided one or more of his co-executors applies for a grant, he may reserve power for himself to do so at a later date. If and when such person obtains probate it is termed "Double Probate."

Double
probate.

New rules
under the
new laws.

Where a person dies after 1925 and either under his will or on his intestacy (as the case may be) there is a minority or a life interest, probate or administration must be granted to not less than two persons or to a trust corporation.

Where a person dies after 1925, broadly speaking it will not be safe to take a receipt from a single executor, administrator, or trustee.

Where a person dies after 1925, there must not be more than four executors of a will.

PART II

CHAPTER I

DUTIES OF EXECUTORS AND ADMINISTRATORS

THE following is a summary of the duties which executors and administrators have to perform, and the order in which they should be carried out—

Order of
Duties.

(1) Bury deceased. (An executor's duty only.)

(2) Prepare account of assets and liabilities, render same to Inland Revenue and pay estate duty thereon.

(3) Obtain probate of the will, where one exists.

(4) Get in all the property of deceased and realize where necessary.

(5) Advertise for and pay the debts of deceased; pay the funeral expenses.

(6) Pay legacies, legacy and other duties and executorship expenses.

(7) Deal with the residue as instructed by the will, or distribute it among the next of kin (as the case may be).

(8) Render an account of his dealings to the persons entitled to the residue and get his discharge from them.

The fundamental difference in law between an executor and an administrator is that the former derives his position from the will, the latter from his appointment by the Court. A grant of Probate as opposed to a grant of Letters of Administration

Difference
between
Executor
and Admini-
strator.

merely supplies evidence of an already existing title. The most obvious practical consequence of this is that an executor should begin his duties and can exercise his powers immediately on the death taking place. An administrator cannot, but must wait for a grant.

CHAPTER II

PROBATE

THE following are the steps necessary to obtain probate of the will— Probate.

An account (called the Estate Duty Account) of all the assets and liabilities of the deceased must be prepared, and this, together with the will must be lodged with the Probate Court (either at the registry for the district in which deceased resided, or at the Principal Registry in London). The estate duty will then have to be paid, after which probate of the will in *common* form will be granted.

Probate consists of an official copy of the will sealed by the Court, in which is stated the gross value of the estate, and how much estate duty has been paid.

Probate may be obtained in COMMON or SOLEMN form.

When a will is proved in solemn form all parties interested are cited to appear in Court, the witnesses are examined on oath, and the validity of the will decided upon; a will so proved can never be invalidated. It is therefore advisable, whenever there is any likelihood of a dispute in regard to a will, that it should be proved in solemn form, as executors can be called upon by interested parties, where probate has been obtained in common form, to prove it in solemn form at any time within thirty years. For ordinary estates, where the will is explicit and straightforward, probate in common form is all that is necessary. Probate in
Solemn
Form.

Anyone who objects to probate or letters of administration being granted to the person applying, must lodge with the Probate Court what is called a caveat, Caveat.

which remains in force for six months, and then, if desired, can be renewed. When probate or letters of administration are applied for, the person applying must give notice of the application to the person who lodged the caveat, who can then appear and state his objections.

Citation.

When a person applying for a grant of probate or administration knows there is someone with a prior claim, he must issue a citation to such person, who is then entitled to appear and state whether or not he waives his prior right to the grant.

Person
abroad with
property in
England.

If a foreigner leaves property in this country, the probate granted by his country should be produced to the Probate Court here, when the English court will, on payment of English estate duty, make what is called an ancillary grant, giving the legal representative power to deal with the property.

Property in
Scotland or
Ireland.

If a person living in England dies possessed of property in Scotland or Northern Ireland, the English probate will have to be submitted to the Probate Courts of those countries before such property can be dealt with, and the reverse applies where a person living in Scotland or Northern Ireland dies leaving property in England. The Irish Free State is now treated as a separate country, and resealing no longer applies there. It is necessary to take out a fresh grant.

Authority
of Executors
and Ad-
ministrators.

Probate and letters of administration are the executor's and administrator's authority for dealing with the estate which they are called upon to administer.

Probate cannot be obtained until the expiration of seven days from death, and letters of administration will not be granted within fourteen days from death. Special formalities are necessary if a period of over three years has elapsed since the death.

CHAPTER III

THE ESTATE DUTY ACCOUNT

THIS account is the one required by the Inland Revenue for estate duty purposes and is filed when application is made for probate or letters of administration. Estate
Duty
Account

The account is rendered on a form which will be supplied on application to the Inland Revenue authorities. There are several forms, applicable under different circumstances, but Form A7 (a copy of which can be obtained on application) is the one applicable to an estate in which every kind of property is included. When the account is lodged the executor or administrator has to swear by affidavit that it contains, to the best of his knowledge and belief, everything required to be included, and that he will account for any further property which may subsequently come into his hands. The estate duty is then paid on the amount shown by the account.

Should it be discovered subsequent to filing the account that any property liable to estate duty, or any liabilities which could have been deducted, were omitted, a further account must be rendered, called a CORRECTIVE AFFIDAVIT, which is explained on page 29. Corrective
Affidavit.

PREPARATION OF THE ESTATE DUTY ACCOUNT

Immediately after the funeral, the executor or person entitled to letters of administration (where there is no will, or a will and no executor named therein),

should proceed to gather together the information necessary for the preparation of this account, as probate of the will, or letters of administration will not be granted until the account is lodged and estate duty paid.

If deceased kept proper accounts showing his property and liabilities, this will greatly simplify the work, as most of the information required will (if such accounts are complete) be found therein, but as unfortunately very few people *do* keep proper accounts of their private affairs, the necessary information has to be sought in many places.

The following is a summary of the steps which should be taken when preparing the estate duty account—

Papers and
Accounts to
be gone
through.

(1) All deceased's papers and accounts (if any) should be carefully gone through, and the information taken therefrom noted.

(2) Application should be made—

Pass Books
to be made
up to date of
death.

(a) To deceased's bankers for the pass books of his accounts to be made up and ruled off at the date of death. The balances of these books must then be put into the account.

Ask Bank
if they hold
Securities.

The bankers should also be asked whether or not they hold any securities belonging to deceased.

Unpresented
cheques at
death will
not be paid.

Note 1. Any cheques drawn by deceased which are not presented before death, will not be paid by the bank, so that they would have to be dealt with by the executors as liabilities of deceased, the old cheques cancelled, and fresh ones issued by the executors on the account which will be opened in their names as "Executors of ."

Arranging
for Bank
overdraft to
pay Estate
Duty.

Note 2. Arrangements have very often to be made with deceased's bankers for them to advance the money necessary to pay the estate duty, as this

has to be paid BEFORE probate is granted. This should be done when the executors open their own bank account for the estate, and the cheque for the duty is then drawn on the new account. Payment of estate duty can now be provided for by an insurance policy, which most of the leading life insurance companies issue, by which the insurance company undertakes to pay the amount required for estate duty to the Inland Revenue BEFORE probate is granted.

Life Insurance to provide for Estate Duty.

(b) Apply to deceased's solicitors, brokers and accountants for any securities they may hold belonging to deceased, or for any information they can give of the affairs of deceased.

Apply to Solicitors, Brokers and Accountants.

(c) Apply to deceased's business for a balance sheet made up to the date of death, and if deceased were a partner in a business, for a copy of the articles of partnership, from which it will be seen how a deceased partner's share is to be ascertained.

Apply to deceased's business for Balance Sheet.

(d) Consult near relatives to ascertain whether they have any information affecting the affairs of deceased, of which the executor is not aware.

Consult near relatives.

(e) Apply to all to whom deceased is likely to owe money, for detailed statements of their accounts against deceased, and insert advertisement in a leading local paper asking for accounts owing by deceased to be sent in by a certain date. *Note.*—Under an Act known as Lord St. Leonard's Act, 1859, an executor who advertises for claims, giving a reasonable time for same to be sent in, is exonerated from any claims which may be sent in after he has distributed the assets, but this would not prevent the creditor from following the assets.

Get in particulars of Debts owing by deceased.

Lord St. Leonard's Act.

Cash in the house.

(f) The cash found on deceased's person and in the house should be taken by the executor and paid into the bank account.

Inventory and valuation of Household Furniture and personal effects.

(g) An inventory and valuation of the household furniture, pictures, china, jewellery, plate, linen, horses, carriages, motor-cars and other personal effects must be made. In very small estates the Inland Revenue will generally pass a valuation by the executor himself, so long as it appears to be reasonable, but on estates of any size it is advisable to employ a professional valuer, when there can be no question of the valuation. When the personal chattels are sold by the executors, the gross realized value is the amount upon which estate duty is payable, unless it can be proved that special circumstances have occurred since the date of death which would alter the value between the date of death and date of sale.

Valuation of Land and Buildings.

(h) If the estate includes land or buildings of any description, the practice is to agree valuations with the Land Valuation department. In all cases a valuation by a recognized professional valuer should be obtained. For the valuation of agricultural property special provisions have been made. If the property is sold soon after death, the gross realized value is the one upon which estate duty should be paid.

Valuation of Investments.

(i) A list of deceased's investments must be prepared from the securities themselves, giving full particulars of the nominal value, number of shares and description of same, and the value worked out at the market price on the day of death. For such investments as are quoted on the Stock Exchange, a newspaper of the day of death showing same quoted therein, will be sufficient proof, but for investments

which have no Stock Exchange quotation, a valuation by the secretary of the company must be obtained. *Note.*—It frequently happens that two prices are given in the Stock Exchange lists, e.g. "A. B. Co., Ltd., Shares £10-£12." In such cases, the price must be taken as one quarter of the difference added to the lower price, so that the foregoing shares would be valued at £10 plus one quarter of the difference between the lower and the higher prices (i.e., 2) = £10½.

If the investments are large or numerous, it is advisable to employ a stockbroker to value all the investments, as this saves a great deal of time, trouble, and risk of error; the stockbroker would list the investments and give a certificate for all the values in such a way as to satisfy the Inland Revenue.

If there are investments, bank balances, or any other kind of assets in the joint names of deceased and another, held so that on the death of either the survivor takes the whole, it must be ascertained what proportion of such joint assets was provided by deceased, and that amount brought in for estate duty.

Joint invest-
ments.

(j) All accrued income, e.g. rents, interest, dividends, etc., must be calculated up to the date of death and be included in the estate duty account. For stocks and shares which are quoted on the Stock Exchange cum div., the price is taken to include any accrued income.

All accrued
Income to
be included
in Estate
Duty
Account.

(k) For *all* assets *some* evidence as to the value must be procured, as will be seen from the foregoing, so that if there are other kinds of property not touched upon, this rule should be followed; for example, a reversionary interest would require

Evidence of
value
necessary
for all Assets.

to be valued at its present worth, based on annuity table values.

Gifts *inter vivos* and *donationes mortis causa*.

(l) As certain gifts *inter vivos* and all *donationes mortis causa* are liable to estate duty (although the recipients are the persons liable for the duty thereon, and if the executor is called upon to pay the duty he must recover it from the recipients of the gifts), they must be included in the account; it is therefore the executor's duty to ascertain what gifts made by deceased are liable to estate duty.

Having obtained documentary evidence for *all* items, the necessary form can now be entered up therefrom.

Where the items under various heads are too numerous to be entered in detail in the form itself, schedules must be prepared and the totals entered on the form, stating therein, "per details on schedule marked, say, 'A.'"

An example of an estate duty account is given on page 117.

CHAPTER IV

ESTATE DUTY

ESTATE duty is a GRADUATED duty payable on the NET AGGREGATE PRINCIPAL VALUE of ALL PROPERTY, real and personal, WHICH PASSES OR IS DEEMED TO PASS ON A PERSON'S DEATH.

Estate
Duty.

What
property
is liable.

For persons dying AFTER 30th June, 1925, the scale of estate duty is that given in the Finance Act, 1925, which is as follows—

Where net aggregate principal value of estate is between					Rates of Estate Duty under Finance Act 1925.
£100 and	£500	the rate per cent. for estate duty is			
500	1,000	"	"	"	2
1,000	5,000	"	"	"	3
5,000	10,000	"	"	"	4
10,000	12,500	"	"	"	5
12,500	15,000	"	"	"	6
15,000	18,000	"	"	"	7
18,000	21,000	"	"	"	8
21,000	25,000	"	"	"	9
25,000	30,000	"	"	"	10
30,000	35,000	"	"	"	11
35,000	40,000	"	"	"	12
40,000	45,000	"	"	"	13
45,000	50,000	"	"	"	14
50,000	55,000	"	"	"	15
55,000	65,000	"	"	"	16
65,000	75,000	"	"	"	17
75,000	85,000	"	"	"	18
85,000	100,000	"	"	"	19
100,000	120,000	"	"	"	20
120,000	140,000	"	"	"	21
140,000	170,000	"	"	"	22
170,000	200,000	"	"	"	23
200,000	250,000	"	"	"	24
250,000	325,000	"	"	"	25
325,000	400,000	"	"	"	26
400,000	500,000	"	"	"	27
500,000	750,000	"	"	"	28
750,000	1,000,000	"	"	"	29
1,000,000	1,250,000	"	"	"	30
1,250,000	1,500,000	"	"	"	32
1,500,000	2,000,000	"	"	"	35
2,000,000 (exceeding)					40

For persons dying BETWEEN 31st July, 1919, and 30th June, 1925, the scale of estate duty is that given in the Finance Act, 1919, which is as follows—

Rates of Estate Duty under 1919 Finance Act.	Where net aggregate principal value of estate is between		Per Cent.	Where net aggregate principal value of estate is between		Per Cent.
	£100 and	£500		£150,000 and	£175,000	
	500	1,000	1	175,000	200,000	18
	1,000	5,000	2	200,000	225,000	19
	5,000	10,000	3	225,000	250,000	20
	10,000	15,000	4	250,000	300,000	21
	15,000	20,000	5	300,000	350,000	22
	20,000	25,000	6	350,000	400,000	23
	25,000	30,000	7	400,000	450,000	24
	30,000	40,000	8	450,000	500,000	25
	40,000	50,000	9	500,000	600,000	26
	50,000	60,000	10	600,000	800,000	27
	60,000	70,000	11	800,000	1,000,000	28
	70,000	90,000	12	1,000,000	1,250,000	30
	90,000	110,000	13	1,250,000	1,500,000	32
	110,000	130,000	14	1,500,000	2,000,000	35
	130,000	150,000	15	Over 2,000,000		40
			16			

For persons dying BETWEEN 15th August, 1914, and 31st July, 1919, the rates of estate duty payable are those set out in the Finance Act of 1914, and are as follows—

Rates of Estate Duty under 1914 Finance Act.	Where net aggregate principal value of estate is between		the rate per cent. for estate duty is	
	£100 and	£500		
	500	1,000		1
	1,000	5,000		2
	5,000	10,000		3
	10,000	20,000		4
	20,000	40,000		5
	40,000	60,000		6
	60,000	80,000		7
	80,000	100,000		8
	100,000	150,000		9
	150,000	200,000		10
	200,000	250,000		11
	250,000	300,000		12
	300,000	350,000		13
	350,000	400,000		14
	400,000	500,000		15
	500,000	600,000		16
	600,000	800,000		17
	800,000	1,000,000		18
	1,000,000	and over		19
				20

For persons who died BEFORE 15th August, 1914,

different rates of estate duty are applicable under previous Finance Acts, according to the date when they died. For particulars, see the Finance Acts themselves.

The principle of aggregation was first introduced by the Finance Act, 1894, and has been retained ever since, although the rates of duty have been increased and the points where the rates change, steepened, by various Finance Acts since 1894. It means the lumping together of all the different properties in respect of which Estate Duty is payable by reason of the death of the deceased person for the purpose of calculating the RATE of duty payable on each. That is to say, his own assets, any settled property in which he had any interest, any dutiable gifts *inter vivos*, etc., are all added together for the purpose of ascertaining the RATE of duty payable on each, such rate being determined by the total of the whole. There are various exceptions to this principle of aggregation, of which the most important in practice is that a "free," i.e. unsettled estate under £1,000 is not aggregable with anything else.

Under Section 13 of 1914 Finance Act, where the net aggregate amount of an estate borders on the point at which the rate changes, provision has been made which does away with the absurd position which previously occurred, of an additional pound above a point where the rate changed rendering the whole estate liable for duty at a higher rate. For example, an estate of £999,999 only paid duty at 14 per cent. which gave a payment of duty of £139,999 17s. 3d., whereas an estate of £1,000,001 was liable for 15 per cent., or a payment of duty of £150,000 3s. The absurdity of such a position is apparent. Under Section 13 of the 1914 Act, it has been provided that the total amount

Concession where estate borders on amount where rate changes. Marginal relief.

of duty payable shall not exceed the highest amount of duty payable at the previous lower rate, plus the amount by which the value of the estate exceeds the point at which the rate changes. Thus, in the foregoing example, the duty payable, applying this rule, would be for an estate of £1,000,001, at the rates *now* in force, at 29 per cent. (i.e. the previous lower rate) on £1,000,000 = £290,000, plus the amount by which the estate exceeds the point at which the rate changes, viz. £1 = £290,001. In other words, the duty is payable at the previous lower rate, on the amount at which the rate changes, and the whole of the estate above that figure is handed over as duty. When this method does not benefit the estate, the duty is, of course, payable at the appropriate rate on the actual amount of the estate.

Rapid
succession
to land or
private
business.

If property consisting of land or a private business (not belonging to a company) becomes liable to estate duty within five years of the same property having previously paid duty, it has been provided by Section 15, Finance Act, 1914, that the duty payable in respect of such property at the second death shall be reduced by percentages, which vary from 50 per cent. to 10 per cent., according to the length of time which has elapsed since the first death.

Estates
under £100
not liable.
Fixed Duty
on Small
Estates.

Estates under £100 in value are not liable to ANY duty.

For small estates where the GROSS value of the estate does not exceed £500, the following fixed duties may be paid instead of the graduated duty, viz.—Where GROSS value exceeds £100 but does not exceed £300 the fixed duty is £1 10s. 0d. Where GROSS value exceeds £300 but does not exceed £500 the fixed duty is £2 10s. 0d. These fixed duties are optional, but are generally adopted. No interest is charged on these fixed duties.

Interest at the rate of 4 per cent. per annum from the date of death to the date of payment of estate duty, is charged on the duty on personalty. (The rate of interest was 3 per cent. for persons dying before 31st July, 1919.) No interest is charged on the estate duty on realty until the expiration of twelve months after death.

Interest on
Estate Duty.

The duty on the personalty must be paid on delivery of the account, and before probate or letters of administration will be granted; but the duty on the realty may, if desired, be paid by sixteen half-yearly instalments, to save the necessity of realizing the property to pay the duty. The Inland Revenue will now accept real property itself as payment for estate duty on realty, which may be conveyed free of stamp duty.

The 1929-1947 5% War Loan, the 4% Funding Loan (1960-90), and National War Bonds will be taken for payment of estate duty without selling the stock, as the equivalent of cash at their respective issue prices, viz., £95 for the 5% loan and £80 for the 4% loan for each £100 of stock surrendered. The 4% Victory Bonds (issued in 1919 at £85 for £100 of the Bonds) will be taken as payment for estate duty at their face value, as the equivalent of cash, provided that the Bonds surrendered have formed part of the estate passing on death of deceased continuously up to the date of death from the date of the original subscription, or for a period of not less than six months immediately preceding the date of death. This condition applies to any of the War Stocks surrendered for payment of estate duty.

War Loan
for Estate
Duty.

Full instructions are issued with the estate duty account forms showing what property is liable to estate duty.

Property
liable for
Estate
Duty.

Gifts *inter vivos* liable for three years.
Section 59, Finance Act, 1909.
Exceptions to liability of gifts *inter vivos*.

Gifts made by deceased within three years of the date of death are liable to estate duty, unless such gifts—

- (1) Do not exceed £100 to one person.
- (2) Were made in consideration of marriage.
- (3) Were made for charitable or public objects.
(Those exceeding £100 made within twelve months of death *are* liable.)

(4) Were part of the normal expenditure and consistently reasonable with the circumstances of deceased.

These gifts are known as dutiable GIFTS INTER VIVOS.

Donatio mortis causa.

A *donatio mortis causa*, which is a gift of personalty made in expectation of the donor's death AT ANY TIME during his lifetime, but made conditionally upon it becoming absolute only on the death of the donor, and revocable during his lifetime, is also liable to estate duty.

It is obvious that gifts *inter vivos* and *donationes mortis causa* have been made liable for estate duty in order to prevent anyone disposing of his property during his lifetime, to evade the duty.

Duty on Gifts *inter vivos* payable by the recipients.

The estate duty on gifts *inter vivos* and *donationes mortis causa* is payable BY THE RECIPIENTS of the gifts, and *not* by the executors, unless the will specifically directs otherwise, but the value and particulars of the property must be included in the estate duty account ; such property may have the effect of rendering the whole estate liable to a higher rate of duty.

Joint investments, etc., held in joint tenancy.

Where investments, bank accounts, or any other kind of property are in joint names, on the death of one of the joint owners, the property will vest in the survivor, and estate duty is payable on such proportion of the value of such property as was provided by the person dying. The duty must come out of the joint property.

Estates under £100 are not liable to estate duty. Exemptions from Estate Duty.

Immovable property situated out of the United Kingdom is not liable to estate duty, but movable property so situated, is liable.

Estates of soldiers and sailors whose death is caused through being on active service, and where the value of the property passing does not exceed £5,000, are exempt from estate and any other duty up to an amount not exceeding £150, provided death ensues within twelve months of the infliction of the wounds or contraction of the disease which caused the death. (1900 Act.) The Deaths Duties (Killed in War) Act, 1914, extends these concessions for those killed in the European War, and exempts from duty altogether estates which do not exceed £5,000, and reduces the duty payable on estates in excess of £5,000. For particulars of these concessions, see the Act itself. Soldiers' and Sailors' estates.

Neither estate nor legacy duty is payable on property bequeathed for the public benefit and which is of national, scientific, or historic interest, e.g. books or pictures. (1894 Act.) The value of such property is excluded from the principal value of the estate when ascertaining the rate of duty for which the estate is liable.

Estate duty is not payable on the death of a husband or wife where the person who has died had only a life interest in the estate of the other party to the marriage. (See Sec. 14 (a), Finance Act, 1914.)

DEDUCTIONS may be made from the gross value of the estate, in ascertaining the amount upon which estate duty is payable, for— Deductions to be made in Estate Duty Accounts.

(1) All debts owing by deceased for consideration given in money or money's worth to persons resident in the United Kingdom, but debts owing to persons

resident out of the United Kingdom CANNOT be deducted unless they have been contracted to be paid *in* the United Kingdom, or are charged on property *in* the United Kingdom. If, however, estate duty has to be paid on personal property situated out of the United Kingdom, then debts owing to persons situated out of the United Kingdom may be deducted from the value of such property. If eventually there are no foreign assets out of which to pay foreign debts they could then be deducted from English assets in a corrective affidavit.

(2) Reasonable funeral expenses, but *not* including the cost of tombstone, mourning, or of bringing the body from abroad.

Estate Duty payable in a Foreign country on personal property abroad.

If estate duty has to be paid on personal property in a foreign country, to the government of the country in which such property is situated, then such duty may be deducted as a DEBT owing by deceased; but where estate duty is payable on property in a British possession, to the government of the possession wherein the property is situated, such duty may be deducted from the ESTATE DUTY payable in the United Kingdom, in respect of such property. If the duty payable in the colony exceeds the English estate duty payable on that property, the amount which is deducted must not exceed the English estate duty on such property.

Ditto on property in a British possession.

EXAMPLE 1

Aggregate amount of estate liable to estate duty (including £10,000 situated in a British colony and which has to pay 5% in that colony), £50,000

English estate duty on £50,000, at 14 %	..	.. =	£7,000
Deduct 5% on £10,000, colonial duty paid	..	.. =	500

Leaving a balance of English estate duty to pay of	..	£6,500
--	----	--------

EXAMPLE 2

Suppose same figures as above, but the 5% payable on property in a foreign country instead of a British colony, the English estate duty to pay would be on—

	£50,000	
Less the foreign duty (5% on £10,000)		
to be deducted as a debt	=	500
	£49,500 at 14 %	= £6,930

The deduction of foreign duty as a debt might have the effect of reducing the *rate* of English estate duty on the whole estate. Except, however, when the RATE is affected, the method of dealing with duty payable in a British possession, saves more English duty than the method of dealing with duty payable in a foreign country.

It frequently happens that the value of a certain portion of the property liable to estate duty cannot be ascertained at the time of lodging the account when applying for probate, e.g. goodwill of a business payable out of and contingent upon future profits. In this case particulars must be given in the first account, and an undertaking given to account for such property as soon as the value is ascertained. Or, property may come to light, the existence of which was not known when the first account was lodged, or further still, an error may be discovered to have been made in the first account by either undervaluing or overvaluing certain assets or omitting liabilities. In all such cases a corrective affidavit must be filed giving full particulars, when the estate duty on the whole estate will have to be adjusted accordingly, and in case of an increase of assets, additional duty paid, and of a decrease, duty returned. These corrective affidavits may have the effect of altering the rate of

Corrective
affidavit.

duty on the whole estate and might make a very material difference either for or against the estate.

Where deceased had a business.

Where deceased had a business of his own, a balance sheet must be prepared and submitted with the estate duty account, showing the assets and liabilities of the business as on the date of death, and the various items on the balance sheet must be put in the form SEPARATELY under their respective headings.

Where deceased was a partner in a business.

Where deceased was a PARTNER in a business the articles of partnership usually provide how a deceased partner's share shall be ascertained, but if no provision is made therein, then a balance sheet of the business must be prepared as on the date of death, showing deceased's capital, share of profits and goodwill up to the date of death, as in the absence of any agreement to the contrary, the Partnership Act, 1890, provides that death of a partner dissolves a partnership. A copy of the balance sheet on which deceased's share as a partner is based, signed by the surviving partners, together with a copy of deceased's account with the firm, made up to the date of death, must be submitted to the Inland Revenue with the estate duty account, but in filling up the form, deceased's share as a partner is included therein in one amount only, as will be seen from the example given on page 117.

Goodwill—how valued.

Whether deceased had a business of his own or was a partner in a business, the value of the goodwill of the business (or his share of it, if he were a partner) must be included in the estate duty account. How goodwill must be valued depends entirely upon the circumstances of each case. In partnerships, the articles usually set forth the amount to be paid to the representatives of a deceased partner for his share of the

goodwill, but in the absence of any such provision or where deceased had a business of his own, then the goodwill must be valued according to the custom of the trade, or by sale of the business to the highest bidder.

All partnership property is, for executorship purposes, personalty.

Partnership
Property
Personalty.

Settlement estate duty, which was introduced in 1894 and abolished under the Finance Act, 1914, Section 14, was an *extra* duty payable on the capital value of any property which was settled on anyone for life in such a way that the person on whom it was settled was not competent to dispose of it. This duty was payable out of the settled property itself unless the will directed otherwise. The payment of settlement estate duty freed the property from any further estate duty until it came into the hands of someone competent to dispose of it. It was payable only once during the continuance of the settlement. This duty was *not* payable where the property was only settled on the husband or wife of deceased, nor where the net principal value of the total estate on which estate duty had been paid did not exceed £1,000. The rate of this duty was originally 1 per cent., which was increased to 2 per cent. under the 1909 Finance Act.

Settlement
Estate Duty.

Exceptions
to S. E. D.

The abolition of settlement estate duty renders settled property liable for estate duty, on every death which occurs during the time the settlement is in existence, i.e. every time the property passes, except where the only interest in the property after deceased's death, is that of the wife or husband of deceased, in which case, no estate duty is payable. (Sec. 14 (a) Finance Act, 1914.)

Estate Duty
payable
every time
property
passes.

Where a person dies who had a life interest in property, the capital value of the property freed by

Aggregation
of settled
property
passing, with
free estate.

the life tenant's death is aggregated with his estate. The rate payable on the settled property, as well as on the life tenant's free estate, is thus determined by the total amount of the life tenant's free estate aggregated with the settled property. An exception to this rule is where the free estate of the life tenant does not exceed £1,000, when the settled property and the free property are each treated as estates by themselves for determining the rate of duty. The estate duty on the settled property is payable out of the settled property itself, unless the will directs otherwise.

Exception to
Aggregation
on settled
property
passing.

Where the settlor died before 1894, the settled property freed by the life tenant's death is treated as a separate estate and is not aggregated with the life tenant's estate for the purpose of ascertaining the rate of estate duty, unless the life tenant had been given a power of appointment in respect of the capital, in which case, the settled property must be aggregated with the other property passing at the death of the life tenant in order to ascertain the *rate* of duty. *In re Dunbar-Buller*, a testator who died in 1875 by will settled property on B for life, with remainder to her children's use and remainder to such uses as she should by will appoint, and in default of appointment to the use of H for life, with remainders over. B died in 1921 without issue, leaving a will by which she exercised the power of appointment, and it was held that, for the purpose of determining the *rate* of estate duty payable on the property passing on the death of B, the property over which B had the power of appointment was to be aggregated with the other property passing on her death.

Settled
property
and estate
duty.

Where a settlement contains a special power of appointment, e.g. a power to appoint among certain

named individuals or a class of individuals the persons benefiting by the exercise of the power are persons who were in the mind of the settlor as intended to benefit thereby. Any claim for duty which arises as a result of the operation of the exercise of the power is regarded as dischargable by the trustees of the settlement. Where however a person has a general power of appointment, this is equivalent to absolute ownership of the property the subject of the power, and accordingly the property is treated on the death of the appointor as part of his own estate and his representatives are responsible for the discharge of the duty.

Where settlement estate duty has been paid, when estate duty first becomes payable on the settled property, the settlement estate duty which was paid will be returned, with simple interest on the duty from 15th August, 1914, the date this duty was abolished.

Return of
S.E.D.

An interesting case (*Harrison re; Johnstone v. Blackburn and East Lancashire Royal Infirmary*) was decided in July, 1918. By the will £30,000 was given to trustees upon trust to pay income therefrom to testator's nephew R for life, and after his death the capital to his children. Failing R leaving issue the capital was bequeathed elsewhere. Testator died in February, 1914, and R was killed on military service in September, 1914, and left no issue. Having died within the "executor's year" R was not entitled to any income from the legacy, which had not been appropriated by the trustees before his death. He therefore obtained no benefit from the legacy, but it clearly "*passed*" at his death for the benefit of the legatee who became entitled to the capital at R's death.

The Inland Revenue claimed estate duty on the £30,000 passing at R's death. Mr. Justice Sargant held that estate duty was not payable at R's death as he died before the legacy became an interest in possession within the meaning of Sec. 5, Sub-sec. 3 of Finance Act, 1894.

CHAPTER V

LEGACIES AND DEVISES

A **LEGACY** is a gift of personalty by will. Legacy

A **DEVISE** is a gift of realty by will. Devise.

BEQUEST is another term for legacy. The usual formula in wills is "I bequeath to A.B." Bequest.

THE **LEGATEE** is the person to whom a legacy is bequeathed. Legatee.

THE **DEVISEE** is the person to whom a gift of realty is devised. Devisee.

REALTY is freehold property. Realty.

PERSONALTY is all property that is not realty, and is generally defined as **MOVABLE PROPERTY**, but **LEASEHOLD PROPERTY IS ALSO PERSONALTY**, however long the term of the lease is. Leasehold property is termed **CHATTELS REAL**. Personalty

If realty is settled or devised on trust for sale, then whether or not there is any power to postpone the sale, and quite irrespective of the actual state of the property from the time the trust becomes exercisable, whether exercised or not, the realty is treated as personalty for all purposes. In the case of all deaths after 1925 intestate, a trust for sale (with power to postpone) is imposed by statute on all the assets in the hands of the administrator.

LEGACIES

Legacies may be classified in two ways, viz.— Legacies,

Firstly (1) general pecuniary; (2) demonstrative; (3) specific; and secondly (1) vested; (2) contingent. Different kinds.

A **GENERAL LEGACY** is an ordinary bequest of an amount payable out of the general estate, and would General Legacy.

be the first to abate in the event of a deficiency of assets.

Demonstrative
Legacy.

A DEMONSTRATIVE LEGACY is a bequest, for the payment of which a fund is demonstrated or pointed out, e.g. "*£100 out of my £1,000 L.M. & S. Railway debentures.*" Such a legacy would not abate in the event of a deficiency of assets, until the whole of the fund out of which the general legacies have to be paid, is exhausted.

A demonstrative legacy is payable out of the general estate if the demonstrated fund does not exist at deceased's death, and is therefore not subject to ademption.

Specific
Legacy.

A SPECIFIC LEGACY is a bequest of specific property, e.g. "*My diamond ring.*" If the testator makes a specific bequest in his will, but during his lifetime has disposed of the property named, it is said to have been ADEEMED, and the legacy cannot therefore be paid, but a specific legacy has this advantage over any other class of legacy, that in the event of a deficiency of assets the subject-matter of the bequest will not be liable for payment of debts until all other assets have been exhausted.

Ademption.

Vested
Legacy.

A VESTED LEGACY is one where the time for payment is postponed, e.g. where a legacy is left to an infant payable at the age of twenty-one. Such a legacy would be payable even though the legatee died before he was twenty-one, in which event it would be paid to the legal representative of the infant legatee.

Contingent
Legacy.

A CONTINGENT LEGACY is one which is payable only on the happening of a certain event, e.g. a bequest to an infant only if, and when, he attains the age of twenty-one. Such a legacy would not be payable if the infant died before reaching the age stipulated.

Whether a legacy payable at a future time is vested or contingent depends entirely upon the wording of the will, and as the difference is so great, it is very important that the testator's wishes should be so expressed as to admit of no doubt upon the matter.

All legacies should be paid within twelve months of death, and if not paid by that time, unless there is good reason for delay, the legatees are entitled to interest at 4 per cent. per annum. The following legacies, however, carry interest from the date of death—

Legacies should be paid in twelve months.

Interest on Legacies.

(1) Legacies to children, where no other provision is made for their maintenance. A legacy left in trust to pay the income to widow until the children attain 21, to be wholly applied by her for the maintenance of herself and children, carries interest from the date of death. (*Ramsay re; Thorpe v. Ramsay.*)

(2) Legacies charged on land.

(3) Demonstrative legacies so long as the demonstrated fund exists.

(4) Specific legacies where the subject-matter is interest bearing.

(5) Legacies bequeathed in satisfaction of an interest-bearing debt.

If a person named as legatee in a will predeceases the testator, the legacy is said to LAPSE and IS NOT PAYABLE, the subject-matter thereof falling into the general estate; there is, however, one very important exception to this rule, viz. :—that in the event of a child of the testator to whom a legacy is bequeathed predeceasing him AND LEAVING ISSUE, such a legacy does not lapse, but is payable as though such child had died immediately after the testator, and would therefore be dealt with in accordance with the deceased child's will, or if there were no will, then

Lapse.

Exception to lapse Wills Act, Sec. 33.

according to the law of intestacy. (Wills Act, 1837, Sec. 33.) In such an event, it has been held, in the case of *re John Scott, junr.*, that the estate of the deceased child would have to pay estate duty on the property bequeathed, as the property would be deemed to pass, and the deceased child would be deemed to have been competent to dispose of it, such property thereby paying estate duty twice, but, of course, by the separate estates of parent and child.

Estate Duty on Legacy to deceased child leaving issue.

Where a legacy is charged on land and the person entitled dies before deceased, such legacy is not payable, but instead of falling into the general estate, it benefits the land on which it is charged.

Lapse where legacy charged on land.

A lapsed share of residue does not necessarily accrue to the other shares of residue. Unless the will directs otherwise it is divisible as in an intestacy.

Legacies for superstitious uses are void, e.g. in *Egan re; Keane v. Hoare*, a legacy for "Masses" to a monastic order was held to be void under this rule.

Legacies to abate if Assets insufficient.

In the event of the assets of the estate not being sufficient to pay all the legacies in full, they must **ABATE** proportionately, the general pecuniary legacies abating first amongst themselves.

If a legatee owes money to testator's estate, he cannot claim his legacy until he has made good what he owes to the estate.

In re Neville; Neville v. First Garden City, Ltd. where a testator used the words in his will, "I forgive all debts owing to me," it was held that such words did not operate as legacies to companies of sums lent by testator and secured by mortgages and charges given by the companies, the intention being merely to confer a benefit on any friend to whom the testator might have lent money.

ANNUITIES

Annuities come under the head of legacies. They Annuities.
commence at the date of death, but the annuitant cannot claim the first payment until the end of the first year, unless the will directs otherwise.

The trustees must deduct income tax from annuities unless they are given free of tax. The annuitants can claim back whatever portion of the tax they are entitled to have returned.

LEGACY AND SUCCESSION DUTIES

In addition to estate duty, which is always payable on every death, legacy duty or succession duty may be payable on the same property or part thereof. But while estate duty is payable on all property passing or deemed to pass on a death by reason of that fact alone, legacy duty and succession duty are duties based on the benefit received by the persons entitled to the property. Considerable exemptions enable many small estates to escape liability for payment thereof. Legacy and
Succession
Duties.

Legacy duty is payable on gifts of personal property (excluding leaseholds) arising under wills or intestacies. Succession duty is payable on gifts of real or leasehold property arising under wills or intestacies and on all property acquired under settlements by deed. It will thus be seen that the two duties are complementary in operation, and can never both be payable. The rates at which they are payable are the same in all cases and for accountancy purposes they may be said to be governed by the same principles.

These duties must be borne by the property bequeathed or devised unless the will directs them to be paid duty free, in which case the duties would fall on the residuary personal estate in the case of

legacies, and on the residuary real estate in the case of devises. The legal personal representative is responsible for the payment of these duties and must pay them within three weeks after paying the legacies. He must obtain receipts from the legatees on forms supplied by the Inland Revenue Authorities, and these forms are then stamped for the amount of duty which has been paid. If the legacies are not directed in the will to be paid duty free, the duty must be deducted from the amount of the legacy.

Rates of
Legacy and
Succession
Duties.

The RATES of legacy and succession duties are now governed by the Finance (1909-10) Act, 1910, and are as follows—

Legacies or devises to the husband, wife, or lineals (i.e. anyone in the main line, viz.—children grandchildren, great-grandchildren, father, mother, grandfather, grandmother, etc.) are FREE OF DUTY EXCEPT IN THE FOLLOWING CASES, viz.—1 per cent. is payable where the value of the estate upon which estate duty has been paid exceeds £15,000 and the amount of the legacy exceeds £1,000, but in the case of a legacy to a widow or a child under twenty-one years of age, only those in excess of £2,000 are liable to this 1 per cent. duty.

Legacies or devises to brothers, sisters, and their descendants (i.e. nephews, nieces, etc.) pay 5 per cent.

Legacies or devises to anyone else pay 10 per cent.

Where the husband or wife of a legatee is of nearer relationship to the testator than the legatee, the rate of duty would be the same as though such legacy were bequeathed to the husband or wife.

Exceptions
to Legacy
and
Succession
Duties.

Neither legacy nor succession duty is payable—

(1) On any legacies or devises where the total net value of the estate (i.e. the amount on which estate

duty has been paid) does not exceed £1,000, and for estates not much in excess of £1,000 the legacy and succession duties payable shall not exceed the amount by which the net value of the estate, for estate duty purposes, exceeds £1,000. (Finance Act, 1914 Sec. 13 (2).) For example, a net estate of £1,020 all bequeathed to a stranger in blood, would be liable to 10 per cent. legacy duty on that sum, viz., £102, but this section would limit the duty to the amount by which the estate exceeds £1,000, viz., £20 instead of £102.

(2) On legacies or devises to the Royal family or on articles of historic or scientific interest bequeathed to the public.

(3) On legacies or devises to the husband, wife, or lineals, except where the 1 per cent. is payable as shown above.

(4) On specific bequests of a value less than £20 each.

Legacy
Duty on
Annuities.

Legacy and succession duties are payable on the capitalized value of annuities; also on the life interest in settled legacies, and on the principal value of the legacy itself on the death of the life tenant.

If a testator by will forgives a debtor his debt, legacy duty would be payable on the amount of the debt.

Legacy duty would be payable if testator directed debts discharged by his bankruptcy to be paid, but such duty would not be payable where statute barred debts are directed to be paid.

Legacy duty is payable on a *donatio mortis causa*, but not on a gift *inter vivos*.

RESIDUARY ACCOUNT

In order that the amount of the residue liable to legacy or succession duties may be assessed, an account,

Residuary
Account.

called the residuary account, must be rendered to the Inland Revenue on the proper form, an example of which is given on page 153.

Preparing
the
Residuary
Account.

The whole of the property must be brought into this account at the price realized for such portion of the assets as have been sold, and at the market price of the date of the account for the unrealized portion. The income received up to the date of the account must also be included.

Deductions can be made for all payments made up to the date of the account, including debts owing by deceased, funeral expenses, legacy, succession, and estate duties, all legacies and devises, annuities (for the amounts paid up to the date of the account), testamentary and executorship expenses.

Legacy duty is payable on the value of the residue at the date when the residue is either distributed among the residuary legatees or retained in trust for them by the executors, and the net income earned by the estate prior to the date of such distribution or retention must be included in the residuary account for payment of legacy duty.

If any payments on account of the residue are made to the residuary legatees before rendering this account, the legacy duty in respect of such payments must be paid within three weeks.

ILLUSTRATION SHOWING THE VARIOUS DUTIES PAYABLE

Suppose an estate of between £1,000,000 and £1,250,000, out of which a legacy of £100,000 is bequeathed to a charity, free of all duties, but which has first to be held in trust in order that the income therefrom shall be enjoyed by a brother of the testator during his lifetime (also free of duty), the following

are the duties which this sum of £100,000 will have borne to the Inland Revenue by the time the principal sum reaches the charity to whom it is bequeathed :

- | | |
|--|----------------|
| (1) Estate duty at 30% on £100,000 (the estate exceeding £1,000,000) | = £30,000 |
| (2) Legacy duty on the life interest payable on the capitalized value of the income, based on the expectancy of life of life tenant. Suppose the value of such life interest to be £20,000. The rate of duty payable would be 5%. | } = £1,000 |
| (3) Estate duty on the principal sum passing at the death of the life tenant, at the rate liable, shown by aggregating this sum with the life tenant's other property. Assume the life tenant's estate to be £10,000 plus this £100,000, making an aggregate of £110,000, and the rate therefore is 20 per cent. | |
| (4) Legacy duty at 10% payable on death of life tenant, when the legacy becomes payable to the charity to whom it is bequeathed. 10% on £100,000 (assuming the value of the legacy to be that amount when paid over). | } = £10,000 |
| | |
| | <u>£61,000</u> |

In the above example, all the duties would be paid out of the original testator's residuary estate, as he bequeathed the principal sum to the charity free of all duties.

In the absence of instructions to the contrary

in the will, the above duties would be paid by the following—

(1) The estate duty, out of the residue of the estate of testator.

(2) The legacy duty on the life interest, out of the life tenant's income, by instalments.

(3) The estate duty payable on the property passing at the death of the life tenant, out of the settled property itself.

(4) The legacy duty on the principal value, out of the legacy itself, by the charity to whom it was bequeathed.

In this event the foregoing amount of duty payable under (4), would be less than the amount shown, as the principal sum reverting to the charity, on the death of the life tenant, would be reduced by the duty payable, (£20,000) at the life tenant's death, and the legacy duty payable under (4), therefore, would be 10 per cent. on £80,000 = £8,000, so that the charity would receive £72,000 net.

Since the abolition of Settlement Estate duty by Section 14 of Finance Act, 1914, many cases have come before the courts where settled legacies have been left "free of all duties," to decide whether estate duty on settled legacies, now payable on the death of life tenants (which is now payable at a rate determined by the aggregated estate of the life tenant) is to be paid out of the residuary estate of the settlor, or out of the settled legacy itself. The question seems to depend upon the particular wording of the direction in settlor's will. Leading cases on the point are *Eve re; Hall v. Eve* and *re Hatch*. In those cases it was held that the estate duty must be paid out of settlor's residue as the remainder in the settled legacy was a

“bequest.” This may be a heavy charge on the residue, and might in fact, under some circumstances, use up all the residue. Another case (*re D'Oyly*) decided this point the other way, viz., duty payable out of the bequest itself.

CHAPTER VI

POWERS AND LIABILITIES OF EXECUTORS, ADMINISTRATORS AND TRUSTEES

EXECUTORSHIP is really concerned only with realizing and distributing the assets of the estate, and if any portion of the estate is left in such a way that it cannot be distributed until the happening of a certain event or the lapse of a specified time (e.g. property left to someone for life or for a term of years, and then to be paid to someone else) a trust is thereby created and the executors of the will (unless separate trustees are named therein) thereby become trustees of the portion of the estate left in trust.

A trustee can be removed by the Court if the welfare of the beneficiaries demands it, even though no dishonesty or incompetence has been alleged or proved against the trustee whom it is sought to have removed. (*Arnott v. Arnott.*)

Whether the office is that of executor or administrator, the person in whom the property vests is known as the legal personal representative.

POWERS

Powers.

The legal personal representative is vested with full powers to deal with the estate. He stands in practically the same position regarding the ownership of the property as deceased himself did, except that his duty is to deal with it in accordance with the will or other instrument from which he derives his authority. He can sell, assign or charge any portion of the estate, can sue and be sued, may compromise debts or claims made on behalf of the estate. He can pay debts barred by the statute of limitations.

In paying debts an executor has power to exercise a right of PREFERENCE in paying CREDITORS OF THE SAME DEGREE, and may pay one before another.

Executor's
right of
Preference.

If a debt is owing *to* an executor personally by the testator, the executor can exercise a right of RETAINER, and retain his own debt before he pays other creditors of equal degree (but he has no right of retainer in respect of a legacy which may be bequeathed to him). An administrator has also a right of retainer, unless he has undertaken by bond not to exercise it, as he would be required to do if the grant were made to a creditor.

Executor's
right of
Retainer.

Section 34 (2) of the Administration of Estates Act, 1925, provides that the right of retainer of a personal representative, and his right to prefer creditors, may be exercised in respect of all assets of the deceased, but the right of retainer shall apply only to debts owing to the personal representative in his own right, whether solely or jointly with another person. This extends the right to retain out of real estate as well as personalty, but prevents the personal representative from retaining a debt owing to him as trustee for others. An executor *de son tort* is given a right of retainer by Section 28 of the same Act.

Where there is more than one executor, he can himself bind the estate, but he cannot bind the other executors without their consent.

If deceased were a joint trustee, such an appointment would not devolve on his legal personal representative, as the surviving trustee would become sole trustee, but if deceased were sole trustee, then such appointment would devolve on his legal personal representative; the latter, if not wishful to act, could have a new

Office of
Trustee
held by
deceased.

trustee appointed in his place, but must take step to have this done and not merely leave it.

Employ-
ment of
Solicitors,
Accountants
etc.

The legal personal representative is entitled to employ solicitors, accountants, brokers, and others to advise and assist him with the work, and may pay their charges out of the estate. If anyone so employed made default either by misappropriation or otherwise, the legal personal representative would not be liable for such default unless he had not exercised proper supervision or the person employed was obviously unsuitable.

LIABILITIES

Liabilities.

The offices of executor, administrator, and trustee all being offices of trust, very onerous responsibilities attach thereto, and persons holding such positions are accountable for, and chargeable with, all property which passes through their hands, or which ought to pass through their hands. What is expected of them is that they will do all that a prudent business man would do for his own affairs, and if by unreasonable delay or negligence on their part any loss is occasioned, they will be personally responsible therefor as having committed what is known as a

Devastavit.

DEVASTAVIT, which means "a wasting of the assets."

Executor's
year.

The executor is allowed a period of one year (known as the executor's year) during which he is expected to wind up the estate, and in that time he must prove the will, pay the various duties for which the estate is liable, realize the assets and pay the debts, funeral expenses, legacies, and expenses. If, however, there is good reason (as there very often is) for all this not having been done *in* the year, nothing can be said or done against him.

AUTHORIZED INVESTMENTS

No investments must be held by trustees which are not authorized BY THE WILL ITSELF, or by the Trustee Act, 1925, and the Colonial Stock Act, 1900. If a trustee invests in, or continues to hold, any investments that are not so authorized, he will be personally liable to make good any loss that may arise on such unauthorized investments.

Authorized
Investment.

Under Section 1 of the Trustee Act, 1925, a trustee may invest any trust funds in his hands, whether at the time in a state of investment or not, in manner following, viz.—

Trustee
Act, 1925.

(a) In any of the Parliamentary stocks or public funds or Government securities of the United Kingdom ;

(b) On real or heritable securities in the United Kingdom, including the security of a charge on freehold land by way of legal mortgage and a charge under Section 33 of the Finance Act, 1896 ;

(c) In the Stock of the Bank of England, or the Bank of Ireland ;

(d) In India seven, five-and-a-half, four-and-a-half, three-and-a-half, three, and two-and-a-half per cent. stock, or in any other capital stock which may at any time be issued by the Secretary of State in Council of India under the authority of any Act of Parliament, and charged on the revenues of India, or any other securities the interest in sterling whereon is payable out of and charged on the revenues of India ;

(e) In any securities the interest of which is for the time being guaranteed by Parliament ;

(f) In consolidated stock created by the Metropolitan Board of Works, or by the London County

Council, or in debenture stock created by the Receiver for the Metropolitan Police District, or in Metropolitan Water Stock ;

(g) In the debenture or rent-charge, or guaranteed or preference stock of any railway company in the United Kingdom incorporated by special Act of Parliament, and having during each of the ten years last past before the date of investment paid a dividend at the rate of not less than 3 per centum on its ordinary stock ;

(h) In the stock of any railway or canal company in the United Kingdom whose undertaking is leased in perpetuity or for a term of not less than 200 years at a fixed rental to any such railway company as is mentioned in paragraph (g) of this subsection, either alone or jointly with any other railway company ;

(i) In the debenture stock of any company owning or operating a railway in India the interest in sterling on which is paid or guaranteed by the Secretary of State in Council of India ;

(j) In the " B " annuities of the Eastern Bengal, the East Indian, the Scinde Punjaub and Delhi, Great Indian Peninsula and Madras Railways, or in any securities substituted therefor, and any like annuities which may at any time after the commencement of this Act be created on the purchase of any other railway by the Secretary of State in Council of India, and charged on the revenues of India, and which may be authorized by Act of Parliament to be accepted by trustees in lieu of any stock held by them in the purchased railway ; also in deferred annuities comprised in the register of holders of annuity Class D and annuities comprised

in the register of annuitants Class C of the East Indian Railway Company ;

(*k*) In the stock of any company owning or operating a railway in India upon which a fixed or minimum dividend in sterling is paid or guaranteed by the Secretary of State in Council of India, or upon the capital of which the interest is so guaranteed ;

(*l*) In the debenture or guaranteed or preference stock of any company in the United Kingdom established for the supply of water for profit, and incorporated by special Act of Parliament or by Royal Charter, and having during each of the ten years last past before the date of investment paid a dividend of not less than 5 per centum on its ordinary stock ;

(*m*) In nominal or inscribed stock issued, or to be issued, under the authority of any Act of Parliament or Provisional Order, by the corporation of any municipal borough in the United Kingdom, having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, or by any county council in the United Kingdom ;

(*n*) In nominal or inscribed stock issued, or to be issued, by any commissioners incorporated by Act of Parliament for the purpose of supplying water, and having a compulsory power of levying rates over an area having, according to the returns of the last census prior to the date of investment, a population exceeding 50,000, provided that during each of the ten years last past before the date of investment the rates levied by such commissioners have not exceeded 80 per centum of the amount authorized by law to be levied ;

(o) In any stocks, funds, or securities authorized under the Colonial Stock Act, 1900, or any Act extending the same, but subject to any restrictions thereby imposed ;

(p) In any local bonds issued under the Housing (Additional Powers) Act, 1919, and mortgages of any fund or rate granted after the passing of that Act under the authority of any Act or Provisional Order by a local authority (including a county council) which is authorized to issue local bonds under that Act ;

(q) In any stock or securities issued in respect of any loan raised by the Government of Northern Ireland ;

(r) In any of the stocks, funds, or securities for the time being authorized for the investment of cash under the control or subject to the order of the Court ;
and may also from time to time vary any such investment.

For the purposes of this section—

(a) The London and North Eastern Railway Company, the Southern Railway Company, the London Midland and Scottish Railway Company, and the Great Western Railway Company shall each be treated as if it were a railway company in Great Britain incorporated by a special Act of Parliament, which had in each of the ten years immediately before the date of amalgamation paid a dividend at the rate of not less than 3 per centum on its ordinary stock, and, for the purposes of this provision the date of amalgamation means—

(i) as respects the London and North Eastern Railway Company and the Southern Railway Company the first day of January, 1923 ; and

(ii) as respects the London Midland and Scottish

Railway Company and the Great Western Railway Company, the first day of July, 1923 ;

(b) A railway or canal company in Northern Ireland, whose system is situate partly in Northern Ireland and partly in the Irish Free State, shall not be deemed to be a railway or canal company in Northern Ireland.

Section 2 of the same Act provides as follows—

(1) A trustee may under the powers of this Act invest in any of the securities mentioned or referred to in Section 1 of this Act, notwithstanding that the same may be redeemable, and that the price exceeds the redemption value.

Provided that, in the case of any stock mentioned or referred to in paragraphs (g), (i), (k), (l), (m), (o), (p), and (q) of Subsection (1) of Section 1 of this Act, which is liable to be redeemed at par or at some other fixed rate, a trustee shall not be entitled to purchase the stock—

(a) at a price exceeding 15 per centum above par, or such other fixed rate ; nor

(b) if the stock is liable to be so redeemed as aforesaid within fifteen years of the date of purchase, at a price exceeding its redemption value.

(2) A trustee may retain until redemption any redeemable stock, fund, or security which may have been purchased in accordance with the powers of this Act, or any statute replaced by this Act.

Trustees may also from time to time vary any such investment.

Section 2 of the Colonial Stock Act, 1900, empowers a trustee to invest in any colonial stock registered in the United Kingdom in accordance with the provisions of the Colonial Stock Acts, 1877 and 1892, as amended by this Act, provided such stocks have been notified in the

Colonial
Stock Act,
1900.

London and Edinburgh Gazettes as having been approved by the treasury, subject to the restrictions contained in Section 2, Subsection (2), of the Trustee Act, 1893.

Liability for retaining cash without investing it.

Executors should pay the debts as soon as possible, and invest any balance of cash. If they keep cash on deposit for an unreasonable time and the estate loses income thereby, the executors will be liable to recoup such loss (*Dornford v. Dornford*, and *Tebbs v. Carpenter*).

Liability for carrying on deceased's business.

Unless distinctly instructed by the will so to do, an executor should not carry on the business of deceased any longer than is necessary to wind it up or to dispose of it advantageously for the estate. If he does carry on the business without authority under the will, he is personally liable for all debts incurred since the testator's death. Even when an executor is directly authorized by the will to carry it on, he is personally liable for the debts he incurs, but in this case is entitled to be reimbursed by the estate.

The legal personal representative must deal with the estate from beginning to end strictly in accordance with the will, where the will directs, and where it does not direct or where there is no will, then according to law. It, therefore, behoves him to have a knowledge of the law on the subject, and whenever he is in doubt, to seek the advice of a solicitor.

Assets with liabilities attached thereto should be sold.

Where any property is left to which there are liabilities attached, e.g. leaseholds (where testator was the lessee), or shares with a liability thereon for calls, the legal personal representative should dispose of such property as soon as possible. Where a liability remains even after the property has been sold, he would be entitled to keep in hand sufficient assets to cover

such liability, until the liability had ceased; for instance, suppose among the assets left by the testator are shares say of a nominal value of £100 each with only £20 called up thereon; for twelve months after they have been sold, the executor would be liable for the £80 per share uncalled, in the event of the company being wound up. He should therefore keep a sufficient amount in hand to cover such a contingency.

In the event of a deficiency of assets for payment of deceased's liabilities in full, it is provided by the Administration of Estates Act, 1925, Section 34, Part I of the first Schedule (1) that the funeral, testamentary and administration expenses have priority, and (2) that the same rules shall prevail and be observed as to the respective rights of secured and unsecured creditors and as to debts and liabilities provable, and as to the valuation of annuities and future and contingent liabilities, and as to the priorities of debts and liabilities as may be in force for the time being under the law of bankruptcy with respect to the assets of persons adjudged bankrupt. Administration in bankruptcy is abolished.

Order of
paying debts
etc., where
assets
insufficient
to pay all.

Adminis-
tration in
Bankruptcy
abolished.

In the event of there being sufficient assets to pay all the debts, but *not* sufficient to carry out testator's directions in the will, the legal personal representative must apply the assets in the following order for payment of the funeral, testamentary and administration expenses, debts, and liabilities. This is known as MARSHALLING THE ASSETS, and is set out in Section 34 (3) and Part II of the first Schedule of the Administration of Estates Act, 1925, viz.—

Marshalling
the assets
where estate
is solvent
but insuf-
ficient to
carry out
all testator's
directions.

(1) Property undisposed of by will, subject to the retention thereof of a fund sufficient to meet any pecuniary legacies.

(2) Property not specifically devised or bequeathed but included (either by a specific or general description) in a residuary gift, subject to the retention out of such property of a fund sufficient to meet any pecuniary legacies, so far as not provided for as aforesaid.

(3) Property specifically appropriated or devised or bequeathed (either by a specific or general description) for the payment of debts.

(4) Property charged with, or devised or bequeathed (either by a specific or general description) subject to a charge for the payment of debts.

(5) The fund, if any, retained to meet pecuniary legacies.

(6) Property specifically devised or bequeathed rateably according to value.

(7) Property appointed by will under a general power.

The testator can by will direct that his debts, etc., shall be paid out of any particular assets he may desire.

In *Timberlake re; Archer v. Timberlake*, a testator specifically bequeathed the assets of his business, but the liabilities of the business were greater than such business assets. It was held that all testator's liabilities, including his business liabilities, must be paid first out of the residuary personalty, next out of specifically bequeathed personalty, including leaseholds and specifically devised or other realty rateably.

Freehold, copyhold or leasehold land subject to a mortgage or charge of any kind must be taken by the beneficiary, subject to such charge, unless the testator devised the land free of such charge.

In *re Nicholson, Nicholson v. Boulton* a testatrix by

will gave her leasehold dwelling house to her nephew. At her death there was a mortgage on the house of £200, which she had given six months' notice of her intention to repay, but before the six months had expired she died. It was held that the nephew took the house subject to the mortgage and was liable therefor.

CHAPTER VII

APPORTIONMENT

What
apportion-
ment is.

THE necessity for apportionment in trust accounts, (which consists of the division of capital and income as between life tenants and remaindermen), mainly arises where the estate or any portion thereof is left in trust.

Definitions
of Life
Tenant and
Remainder-
man.

The life tenant is the one entitled to the income arising from settled property, and the remainderman is the one entitled, on the death of the life tenant, to the settled property.

EXAMPLE.—A testator leaves the whole of his estate (after payment of funeral expenses, debts, duties and expenses) in trust, the income therefrom to be paid to his widow for life (who is thus the life tenant) and on her death the capital to go to his child (who is thus the remainderman).

Apportion-
ment Act,
1870.

Apportionment in trust accounts is governed principally by the Apportionment Act, 1870, which provides "that all rents, annuities, dividends and other periodical payments in the nature of income (whether reserved or made payable under an instrument in writing or not) shall, like interest on money lent, be considered as accruing from day to day, and shall be apportionable in respect of time accordingly."

Example of
Apportion-
ment at
death of
testator.

The following example illustrates apportionment—
A died on the 31st January, 1920, leaving his property in trust, the income therefrom to be enjoyed by the widow during her lifetime, and after her death all the property to go to his only child. Among the assets of the estate is £2,000 of 2½ per cent. consols, the first dividend from which would be received on

5th April, 1920, for the quarter year 5th January to 5th April, viz.—

2½% on £2,000 for quarter year, 5th Jan. to 5th April =	£12 10 0
Less Income Tax @ 6s. 0d. =	3 15 0
	<u>£8 15 0</u>

This £8 15s. 0d. would be apportioned between capital and income as follows—

Jan. 5th to date of death	
(Jan. 31st) = 26 days $\frac{26}{31}$ of £8 15 0 =	£2 10 0 Capital
Jan. 31st to April 5th = 65 " $\frac{65}{31}$ " " " =	£6 5 0 Income.
<u>91</u>	<u>£8 15 0</u>

The life tenant would thus receive £6 5s. 0d. of the first dividend and the £2 10s. 0d. would become part of the capital of the estate which would go to the remainderman on the death of the life tenant. If we assume that the same investment of £2,000 consols is continued, the whole of the next and all subsequent dividends until the death of the life tenant would go to income, when the question of apportionment would arise again. Suppose the life tenant died on 31st December, 1920, her income from this investment of £2,000 consols would have been as follows—

Example of
Apportion-
ment on
death of life
tenant.

Above proportion of 1st Dividend to 5th April, 1920	£6 5 0
Dividend for quarter ending 5th July, 1920	8 15 0
" " " 5th Oct., 1920	8 15 0
Proportion of Dividend for quarter ending 5th Jan., 1921	
viz., 5th Oct. to 31st Dec. = 87 days $\frac{87}{31}$ of £8 15 0 =	8 5 6
	<u>£32 0 6</u>

The five days (31st December to 5th January, viz., $\frac{5}{31}$ of £8 15s. 0d. = 9s. 6d.) of this last dividend would become part of the capital of the estate to which the remainderman would be entitled.

Payments
require
apportion-
ment as well
as income.

The same principles of apportionment apply to PAYMENTS as to income, so that all items (whether of income or expenditure) which cover periods prior and subsequent to the death of the original testator, or of the life tenant, require to be apportioned.

The following are examples of PAYMENTS which require apportionment over the period for which they are paid—

Rents and ground rents, income tax, rates, insurance premiums, interest on loans and mortgages.

Payments
wholly
chargeable
to capital.

The following payments are charges against capital only, except where the rule in *Allhusen v. Whittell* is followed (see page 77).

Funeral expenses ; estate, legacy, and succession duties where the will directs the legacies, devises and settlements to be paid duty free ; costs of proving the will ; accountant's charges for preparing estate duty account and opening the books ; all expenses in connection with 'the estate' duty account and proving the will, e.g. stockbroker's and valuer's fees for valuations ; any expenses incurred in realizing the assets or changing the investments, e.g. stockbroker's commission, solicitor's costs and stamp duty on conveyance of property.

Payments
wholly
chargeable
against
income.

The following PAYMENTS are charges against income only—

Interest on estate duty ; bank interest on executors' account ; accountant's charges for keeping or auditing the books after they have been opened ; all expenses incurred in carrying on the trust.

Further examples of apportionment will be found in the examples of accounts.

APPORTIONMENT UNDER SPECIAL CIRCUMSTANCES

APPORTIONMENT OF A FINAL DIVIDEND WHERE AN INTERIM DIVIDEND HAS BEEN PAID PRIOR TO TESTATOR'S DEATH.

Apportionment of Final dividend where Interim dividend has been paid in testator's lifetime.

EXAMPLE.—Testator died 30th September, 1920, and left estate in trust for a tenant for life. Included in the assets is an investment of £1,000 in ordinary shares in a company which had paid an interim dividend at 30th June, 1920, at 10 per cent. per annum (on £1,000 for half-year = £50). A final dividend is paid in February, 1921, for the year to 31st December, 1920, at 20 per cent. per annum (on £1,000 for six months = £100). This final dividend (£100) would be apportioned as follows—Ascertain what the total dividend (interim and final) for the year amounted to, and apportion that figure according to the period for which it has been paid, as shown by the following example (in which income tax has been ignored), viz.

Total dividend for year to 31st Dec., 1920 (interim £50, final £100)	=	£150	0	0
Proportion of £150 to 30th Sept. (date of death)	=			
$\frac{374}{366}$ of £150	=	112	5	11
Deduct interim dividend paid in deceased's lifetime		50	0	0
Proportion of final dividend (£100) to credit capital	=	62	5	11
(30th Sept. to 31st Dec. = $\frac{92}{366}$ of £150)	income }	=	37	14
				1
		£100	0	0

The tenant for life cannot claim more than the amount of the final dividend under any circumstances, so that where the interim dividend was so much higher

than the final dividend that apportionment on above lines would entail capital paying to income, the life tenant would be entitled only to the amount of the final dividend.

EXAMPLE—Suppose interim dividend to have been £80 and final dividend £20 for year to 31st December, testator dying 30th September. To apportion as in previous example would entail income being entitled to three months (that is $\frac{1}{4}$) of the dividend for the whole year (£100) = £25, being £5 in excess of the final dividend, thus necessitating drawing on capital to pay income, which must never be done.

AN INTERIM dividend received after death, covering periods prior and subsequent to death, should not be apportioned until the final dividend is declared, when the dividend for the year would be apportioned in the way just described.

Apportion-
ment of
arrears of
cumulative
preference
dividend.

ARREARS OF CUMULATIVE PREFERENCE DIVIDEND RECEIVED AFTER DEATH. Apportion the amount received ACCORDING TO THE PERIOD DURING WHICH THE PROFIT HAS BEEN EARNED, OUT OF WHICH THE DIVIDEND HAS BEEN DECLARED, IRRESPECTIVE OF THE PERIOD THAT THE ARREARS COVER, as until a fund exists for the payment of the interest it has been held that there are no arrears. If, therefore, the arrears are earned in a period subsequent to death, the amount would all be income, even though the arrears were for a period PRIOR to death.

EXAMPLE.—A died 30th September, 1920. One of his investments was £1,000 of 15 per cent. cumulative preference shares in a company, the dividend on which had not been paid for two years, the last payment being up to 31st December, 1917. In March, 1921,

the company declared OUT OF PROFITS EARNED DURING THE YEAR ENDED 31ST DECEMBER, 1920, 15 per cent. on these shares. The amount received, therefore would be—

$$15\% \text{ on } \pounds 1,000 = \pounds 150, \text{ less tax at } 6\text{s. } 0\text{d.} = \pounds 45 \text{ 0s.} = \pounds 105 \text{ 0s. } 0\text{d.}$$

and following above rule, this would be apportioned over the period during which the profits were earned out of which the dividend was declared, and not over the period in respect of which it was paid. Apportionment would therefore be made over the year to 31st December, 1920, as follows—

1st Jan., 1920, to 30th Sept., 1920	(date of death) = $\frac{371}{386}$	of £105 0 0	=	£78 12 2	to Capital
30th Sept., 1920, to 31st Dec., 1920	= $\frac{386}{386}$	of "	=	26 7 10	to Income
				<u>£105 0 0</u>	

If all the profits out of which the arrears are paid were earned in a period PRIOR to death, although the dividend and arrears were declared and paid AFTER death, the whole of the amount received would be capital, and in like manner, if all the profits out of which the arrears are paid were earned in a period SUBSEQUENT to death, the whole of the amount received would be income.

It should be noted that the foregoing rule applies only to DIVIDENDS on SHARES and does *not* apply to such investments as loans or debentures; as, in the case of shares, although the dividends are cumulative, they are contingent upon the profit being earned, whereas INTEREST is a debt accruing from day to day, and is payable whether or not profits are made out of which to pay it. Leading cases on this subject are: (1) *re Wakley*; *Wakley v. Vachell*; (2) *re Taylor*; *Mathieson v. Taylor*, and (3) *Marjoribanks v. Dansey*.

Property of
a wasting
nature.

*Howe v.
Lord
Dartmouth*

PROPERTY OF A WASTING OR REVERSIONARY NATURE, e.g. SHORT LEASEHOLDS. It has been laid down in the leading case of *Howe v. Lord Dartmouth* and confirmed in many subsequent cases that where the residue of *personal* estate is left in trust for persons in succession and part of such residue consists of property of a wasting or reversionary nature, such property must be realized and the proceeds invested in authorized securities. The tenant for life is entitled to 3 per cent. per annum (or such interest as the proceeds would have produced if invested in Consols) from the date of death to the date of realization, on the net proceeds of the sale. Where, however, the will authorizes such an investment to be held, the tenant for life would be entitled to the whole of the income from the investment. (But see Addendum on page 159.)

If the property cannot be sold within the first year after death, the life tenant would be entitled to interest from the date of death on the value of the property at the date of death.

It should be noted that the rule DOES NOT EXTEND TO REAL ESTATE.

The object of the rule is to protect the capital for the benefit of the remainderman, but of course, where it is the evident intention of the testator that such an investment should be held for the benefit of the tenant for life, the instructions in the will must prevail, as a man has a right to deal with his property by will, as he desires.

In the absence of specific directions in the will that such property shall be retained for the benefit of the life tenant, the Court always assumes, in directing as to apportionment between a life tenant and a remainderman where assets of a wasting, reversionary,

contingent or specially hazardous nature are involved, that it was the intention of the testator that both the life tenant and the remainderman should share in the enjoyment of the settled principal sum. Hence the ruling in *Howe v. Lord Dartmouth* and other cases on the subject. (See Addendum, page 159.)

EXAMPLE.—A testator who died 28th September, 1920, left the residue of his personal estate in trust, the income therefrom to be paid to A for life, with remainder to B on A's death. Part of the residue consisted of leasehold property having twenty years to run, and there was no authority in the will to continue the investment. The income from the property was £200 per annum. The property was valued at the date of testator's death for estate duty purposes at £3,100. In accordance with the rule in *Howe v. Lord Dartmouth*, the property was sold as soon as possible, say, on 30thth June, 1921, for £3,188 6s. 8d. The costs of the sale and apportionment of rents amounted to £188 6s. 8d., leaving the net proceeds at £3,000. On the following page is the ledger account showing the apportionment between the life tenant and the remainderman.

Example of
Howe v.
Lord
Dartmouth.

After making the apportionment as shown in the foregoing example the executors must invest the balance, viz.—

Proceeds of Sale		£3000	0	0
Rents received	£200	0	0	
Less Income Tax paid	30	0	0	
		170	0	0
		3170	0	0
Less Life Tenant's proportion		47	9	4
		£3122	10	8

in an authorized investment, and the life tenant will thereafter receive the income from such investment.

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LEASEHOLD PROPERTY ACCOUNT HAVING 20 YEARS TO RUN FROM 28TH SEPT., 1920.

Cr.

Date.	Particulars.	Income.	Capital.	Date.	Particular.	Income.	Capital.
1920 Sept. 28	To Estate A/c, being valuation for Estate duty purposes			1920 Oct. 5	By Cash, $\frac{1}{4}$ yr's. rent to Sept. 29th		
1921 Jan. 31	" Cash, Income Tax, 1st Instalment 1920-21 ..		3100 0 0	1921 Jan. 5	" Cash, $\frac{1}{4}$ yr's. rent to Dec. 25th		50 0 0
June 30	" Transfer to Income, per contra, being 3% p.a. on proceeds of Sale of property from 28th Sept., 1920, (date of death) to 30th June, 1921 (date of sale) = 275 days on £3000 @ 3% p.a. = £67 16 2 Less Income Tax @ 6/- = £20 6 10		30 0 0	April 5	" Cash, $\frac{1}{4}$ yr's. rent to March 25th		50 0 0
	" Transfer to the Life Tenant's a/c			June 30	" Cash, $\frac{1}{4}$ yr's. rent to June 24th		50 0 0
	" Transfer to Estate a/c, being profit on realization			" "	" Cash, net proceeds of sale of the property, after deducting costs and expenses of the sale and apportioning rents and taxes between vendor and purchaser		
		47 9 4	47 9 4	" "	" Transfer from Capital, per contra	47 9 4	3000 0 0
			22 10 8	" "			
		£47 9 4	£3200 0 0			£47 9 4	£3200 0 0

(NOTE.—The rate of interest will probably be higher than 3% now; it will most likely be based on the current yield of Consols.)

Where UNAUTHORIZED investments (which are not necessarily of a wasting or reversionary character) are IMPROPERLY retained, the life tenant is entitled, from the date of death, to an income equal to that which would have been produced if such investment had been sold *one year after death*, and the proceeds had been invested in consols. (*Dimes v. Scott* and *re Duckworth*.)

Where unauthorized investments improperly retained.

EXAMPLE.—A died 30th September, 1919, leaving the residue of his estate in trust, for the widow to enjoy the income therefrom for life, and on her death the capital to be divided amongst his children. One of the assets consisted of 200 £10 shares in a Coal Mining Co., valued for estate duty at £15 per share. The executors had no power under the will to continue the investment, but considering it a good one, did so. The ledger account on the next page shows the apportionment between the life tenant and remainderman. The shares were valued at 30th September, 1920 (one year after death), at £16 per share, and consols at that date were 50 per cent. The shares paid dividends (free of tax) at 15 per cent. per annum, half-yearly to 30th September and 31st March. The widow died 30th September, 1921, when the shares were sold at £17 per share. Ignore brokerage and income tax.

If the testator by his will authorizes the continuance of non-trustee investments and states that the foregoing rules shall not apply, the tenant for life will be entitled to *all* the income therefrom (*Pickering v. Pickering*, and *re Wilson*; *Moore v. Wilson*, and other cases). A mere power to postpone conversion (thus implying an instruction to convert ultimately) is not sufficient to give the tenant for life *all* the income. If the unauthorized investment *is* held under a power to *postpone* conversion, the life tenant will be entitled

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COAL MINING SHARES ACCOUNT.

Cr.

Date.	Particulars.	Income.	Capital.	Date.	Particulars.	Income.	Capital.
1919 Sept. 30	To Estate $\frac{1}{2}\%$, value of 200 £10 shares at £15 per share			1920 Mar. 31	By Cash, $\frac{1}{2}$ yr's dividend @ 15 % p.a. on £2000		150 0 0
1920 Sept. 30	To transfer to Income, being Life Tenant's In- come for year on value of this investment one year after death, viz., £16 per share = £3200 would purchase Consols at 50 % (price at this date) of nominal value of £6400 @ $2\frac{1}{2}$ % =		3000 0 0	Sept. 30	By Cash, $\frac{1}{2}$ yr's dividend @ 15 % p.a. on £2000		150 0 0
				" "	By Transfer from Capital per contra, 2 years' in- come to date of death of Life Tenant	320 0 0	150 0 0
1921 Sept. 30	To Transfer to Income, being Life Tenant's In- come for second year on £6400 in Consols as above To Transfer to Life Tenant's Account		160 0 0	Oct. 1	By Cash, proceeds of sale of 200 £10 shares @ £17 each		3400 0 0
"	To Transfer to Estate $\frac{1}{2}\%$, being accumulations of Income during Life Ten- ant's life	320 0 0					
"	To Transfer to Estate $\frac{1}{2}\%$, being profit on sale ..		280 0 0				
			400 0 0				
		£320 0 0	£4000 0 0			£320 0 0	£4000 0 0

to 3 per cent. per annum instead of the income from the value of the investment in Consols at the end of the year after death, as shown in the foregoing example (*re Chaytor*; *Chaytor v. Horn*). There are many other cases bearing on this subject which have been decided in the Courts, but the foregoing are the principles which appear to be followed in all the cases. The object of the Court when this question of the right of a tenant for life to income from unauthorized investments is brought before it, seems to be to give the tenant for life A REASONABLE AMOUNT of income since testator's death, and not *all* the income. It does not always appear to keep to the value of Consols basis (as shown in the foregoing account) nor even the 3 per cent. basis, for in the case of *re Lynch Blosse* the tenant for life was allowed 4 per cent. from testator's death, on the value of the unauthorized investments one year after death, and 4 per cent. would probably be the rate which would be adopted in all such cases now, having regard to the increase which has taken place in the present-day yield of trustee investments.

If there is an express trust for conversion, such a trust must be strictly followed, and if so followed the Court will seldom interfere. If no directions are given, then all unauthorized investments should be sold within a year of testator's death, and the proceeds invested in authorized securities.

Where there is a direction to convert, and delay in conversion is authorized, but the property is secure and produces a large income but is not capable of prompt realization, it must be valued, and 4 per cent. per annum thereon given to the life tenant, the balance of income invested and the income thereon given to

the life tenant, but the *corpus* added to capital (*Meyer v. Simonsen*).

Brown v. Gellatly draws a distinction between the will where there is in addition to a power to postpone a power to pay to the life tenant the whole of the intermediate income, and a will where there is not.

Contingent, reversionary and future interests, wasting property (e.g. short leaseholds), and investments of a speculative character, bearing high rates of interest, are unsuitable investments for trust funds, even when authorized by will.

*re W. J.
Hoyle decd.*

A case of some importance is that of *re W. J. Hoyle decd.* In this case a trustee, who was also tenant for life, re-invested part of the trust money in investments authorized by will (for such investments as were held at testator's death) but there was no authority to re-invest in them. These investments yielded a high rate of interest, and the remainderman sought, on the death of the life tenant, to make her estate liable to pay back all income in excess of 3 per cent. per annum which had been received from the unauthorized re-investments, as well as to make good any loss which occurred on realization. It was held that the tenant for life, being also trustee, was *as trustee* liable to make good the loss on realization of the unauthorized securities, but not to refund any excess of income which may have been derived from such investments. (See also *Stroud v. Gwyer*.)

Apportion-
ment of a
Reversion-
ary Interest.

Where part of the residue of an estate consists of a reversionary interest (reversionary interest means AN ESTATE IN EXPECTANCY, e.g. if testator had DURING HIS LIFETIME granted a life interest in some property and the life tenant of such property were living at testator's death), this would require special treatment

from an apportionment point of view, when the property in question falls into the estate, and the rule is laid down in the leading case *re the Earl of Chesterfield's Trusts* and other more recent cases, e.g. *re Morley*, *re Goodenough*, *re Rowlls*. It is as follows—Ascertain what sum invested at the date of testator's death at 4 per cent. per annum compound interest, to the date of realization, would amount to the sum received; this amount is capital, and the balance income.

The rule in *re Earl of Chesterfield's Trusts*.

The rate of interest to be adopted under this rule was originally 3 per cent., but increased to 4 per cent. in recent cases; *re Baker*; *Baker v. Public Trustee*.

EXAMPLE.—A testator died 31st December, 1922, and left the residue of his personal estate in trust, the income therefrom to be paid to A for life with remainder to B. Part of the residue consisted of deceased's reversionary interest in an investment of £2,000 Manchester Corporation 3½ per cent. stock, which had been left to him under the will of his brother, but subject to the income therefrom being paid to his father during his (the father's) lifetime. The father did not die until 31st December, 1925, when the said investment fell into the residue of testator's estate. Apportion this £2,000 investment between the life tenant and remainderman of testator's estate. Assume the market value of the stock to be par at the date it falls into the residue.

Example of rule in *re Earl of Chesterfield's Trusts*.

Following above rule, ascertain what sum invested at 4 per cent. per annum compound interest on 31st December, 1922 (date of testator's death), would on 31st December, 1925 (the date the investment falls in), amount to the sum received; that amount is capital, and the balance income. The following is the result,

ignoring income tax, which in practice would have to be taken into account—

4% on	£1777	19	9	=	£71	2	5	Year to 31st Dec.,	1923
" "	1849	2	2	=	73	19	4	" "	1924
" "	1923	1	6	=	76	18	6	" "	1925

£222 0 3, + £1777 19 9 = £2000,
the sum realized.

£1,777 19s. 9d., therefore, is capital, and £222 0s. 3d. is income.

A comparison of the rules of the two cases of *Howe v. Lord Dartmouth* and *Earl of Chesterfield's Trusts*, will indicate that the object of the former is to protect the remainderman, while the latter is to protect the life tenant; this shows that the Court has always endeavoured to deal equitably with both.

ANNUITIES AND APPORTIONMENT

Annuities
and
Apportion-
ment.

The question of the apportionment of annuities presents some difficulty, as there have been many cases before the Courts on the subject, but the decisions seem to have varied, so that it is not possible to state any very definite rule. The circumstances of each case and the wording of the will, or other instrument granting the annuity, must be known before any decision can be given. The rulings given in leading cases appear to show that there is an important difference between an annuity which the testator contracted to pay during his lifetime (the continuance of which is a liability of his estate at his death), and one which he bequeaths by will to be paid out of the residue. In the first case THE CAPITALIZED VALUE OF THE ANNUITY IS A CHARGE AGAINST CAPITAL, while in the latter case INCOME generally has to contribute the whole, and capital would only be resorted

Important
difference
between
annuities
contracted
in deceased's
lifetime and
those left by
will.

to when income is exhausted, unless the will shows that the testator intended otherwise.

ANNUITIES CONTRACTED IN DECEASED'S LIFETIME. *re Dawson.*
 Leading cases on this subject are : *Yates v. Yates* and *re Dawson* (1906), where it was decided that each instalment of the annuity should be apportioned between capital and income, according to the actuarial values of the respective interests of the life tenant and the remainderman ; so that according to this rule, each instalment will be apportioned in the same proportion.

EXAMPLE.—Annuity of £200 per annum charged on an estate settled, the income therefrom to A for life with remainder to B. Suppose A's life interest in the income, capitalized at testator's death, is actuarially valued at £5,000, and the capital of the estate which will go to the remainderman is £25,000. Following the above rule, the £200 per annum will be apportioned each year in the proportions of 5,000 and 25,000, viz., one-sixth to income and five-sixths to capital. Example of rule in *re Dawson.*

Re Perkins and *re Thompson*. A different rule *re Perkins.*
 was laid down in these cases, which was as follows—Each instalment of the annuity, as it accrued, was to be apportioned by ascertaining what sum invested at 3 per cent. per annum, SIMPLE interest, from testator's death to the due date of payment, would produce the amount of the instalment ; that sum is capital, and the balance income.

EXAMPLE.—A testator who died 31st December, 1917, Example of rule in *re Perkins.*
 had undertaken in his lifetime to pay £50 per annum as annuity to B for life. He left the residue of his estate in trust. The payments of such an annuity following the above rule, would be apportioned each year when they were made, between capital and income, as follows—

1st year's instalment due Dec. 31st, 1918	£48 10 10	to Capital
3% p.a. for one year on £48 10 10	1 9 2	„ Income
	<u>£50 0 0</u>	

2nd year's instalment due Dec. 31st, 1919	£47 3 4	to Capital
3% p.a. for <i>two</i> years on £47 3 4	2 16 8	„ Income
	<u>£50 0 0</u>	

3rd year's instalment due Dec. 31st, 1920	£45 17 5	to Capital
3% p.a. for three years on £45 17 5	4 2 7	„ Income
	<u>£50 0 0</u>	

and so on each year the annuity is paid. It will be noticed that SIMPLE interest is taken. The rate of interest will probably be 4 per cent. now.

Comparison
of *re Dawson*
and *re*
Perkins.

The difference between the first method as laid down *In re Dawson* and the second as laid down *In re Perkins* is very great, as in the former the proportions which capital and income bear respectively are the same each year, while in the latter, the proportion which income bears increases each year, while that borne by capital decreases by a like amount. It is thought, however, that the latter (*re Perkins*) is the more correct method. The decision in the *Dawson* case was given because it was desired to save the complicated calculation which the rule in the *Perkins* case involves, the former estate being a small one.

ANNUITIES BEQUEATHED BY WILL. Where *legacies and annuities* are *bequeathed*, and there are not sufficient assets after payment of debts, duties, and expenses, to pay *all* the legacies and annuities in full, they must abate proportionately among themselves. Annuities bequeathed by will are, for abatement purposes, the same as general pecuniary legacies, so that where there is a deficiency of assets they must be actuarially valued as at the date of death, and made to abate on

the basis of such valuation, along with the general pecuniary legacies.

An important case bearing on annuities is that of *re Robbins*; *Robbins v. Legge*, where a testator who died 11th October, 1905, directed by will that a government annuity of £400 per annum should be purchased for his wife. The wife died 27th October, 1905, before the annuity had been purchased. It was held that the legal personal representatives of the wife were entitled to the sum which would, at testator's death, have purchased the annuity. The Judge stated that a direction in the will to apply a definite sum of money to the purchase of an annuity was to be regarded as a legacy of the definite sum, vesting in the intended annuitant on testator's death.

APPORTIONMENT OF ARREARS OF MORTGAGE INTEREST, WHERE THE MORTGAGED PROPERTY HAS BEEN SOLD AND THE PROCEEDS ARE INSUFFICIENT TO PAY BOTH PRINCIPAL AND ARREARS OF INTEREST. The rule for apportionment in such an event is laid down in the case *re Atkinson*; *Barber's Co. v. Grose Smith* when it was held that the proceeds of the sale of the property must be apportioned between capital and income in the proportion which the interest in arrear bears to the principal plus the arrears of interest.

EXAMPLE.—Part of a trust consisted of a mortgage of £10,000 on real property; rate of interest 4 per cent. per annum. The interest was in arrear for two years when the property was sold for £8,000. The following is how the £8,000 would be apportioned in accordance with the rule *In re Atkinson*—

Two years' interest @ 4% p.a. on £10000 = £800 amount in arrear
Principal due £10000

£10800

Arrears of Mortgage interest and apportionment of proceeds of sale.

The rule *In re Atkinson*

Examples of rule *In re Atkinson*.

Income is entitled to	$\frac{10800}{10800}$	of the £8000 realized	=	£592 11 10
Capital	"	" " "	=	£7407 8 2
				£8000 0 0

If we assume that the life tenant had received £200 for rents on account of the interest in arrear, the apportionment would be as follows—

Two years' interest @ 4% on £10000 = £800 less				
£200 rents received	=	£600	0	0
Income is entitled to $\frac{10600}{10800}$ of the £8000 realized =		£452	16	6
Capital " $\frac{10000}{10800}$ " " =		£7547	3	6
		£8000	0	0

In re Horn's Estate ; Public Trustee v. Garnett, a trustee, acting under power in a will, invested trust money on the security of nine mortgages on nine leasehold properties. The mortgagor became bankrupt and the trustees foreclosed. Four of the properties were sold, leaving five unsold. In the case of two the net rents exceeded the amount of the mortgage interest. In two others the net rents about equalled the mortgage interest, and in the remaining case the net rents were less than the mortgage interest. It was held that the tenant for life was entitled to the whole of the net rents, pending the sale of the properties, but that if, during the period, the net rents amounted to less than he would have received as interest on the mortgages, he would not be entitled to claim any part of the proceeds of sale. The principle on which this case is decided is that foreclosure having taken place, the right of redemption has gone and the mortgage is at an end. The trustees hold the mortgaged property no longer as such but as leasehold property as it is, and the income is rents and profits and not interest.

APPORTIONMENT OF DEBTS, FUNERAL AND TESTAMENTARY EXPENSES, LEGACIES, ETC., BETWEEN CAPITAL AND INCOME. In practice these are generally charged wholly against capital (see page 60) and a clause is very often included in wills stating that they are to be so dealt with, but the case of *Allhusen v. Whittell* laid down the principle that they should be borne RATEABLY BY CAPITAL AND THE FIRST YEAR'S INCOME, the rule being based on the fact that the assets in the hands of executors required for payment of these outgoings are *not* part of the residue, and that the tenant for life is therefore not entitled to any income which such assets may produce whilst in hand. Strictly speaking, unless this rule is specifically exempted by the will, it should be followed in all cases where there are tenant for life and remainderman, but as already stated, it is seldom observed in practice, on account of its difficulty of application.

Apportionment of debts, funeral and testamentary expenses and legacies.

The rule in *Allhusen v. Whittell*.

EXAMPLE.—A died 10th January, 1921, leaving assets valued for estate duty gross £20,000. The whole estate was left in trust, the income therefrom to be paid to the widow for life with remainder to his only child. The income for the first year amounted to £800. The debts, funeral and testamentary expenses and immediate legacies (i.e. everything which should be paid during the "executor's year") amounted to £4,000. Apportion the £4,000 between capital and income in accordance with the rule in *Allhusen v. Whittell*—

Example of rule in *Allhusen v. Whittell*.

Gross value of the estate	=	£20000
First year's income	=	£800
		£20800

Apportion the £4,000 as follows—

To Capital	$\frac{20000}{20000}$	of £4000	=	£3846	3	0
„ Income	$\frac{20000}{20000}$	„	=	£153	17	0
				£4000		0 0

In re McEuen; McEuen v. Phelps it was decided that where residue is limited to persons in succession, their successive enjoyment should be an enjoyment of the same fund, and to effect that object the Court is bound to enter into a sort of equitable book-keeping or adjustment of capital and income. The Court, however, need not apply the rule in *Allhusen v. Whittell* where its application would be inequitable, as for instance where large sums have been spent in clearing the estate before the end of the first year. The Judge made a declaration that on taking the account of the shares of income during the first year from the testator's death, there should be debited against such shares, interest at 4 per cent. per annum upon the capital sum which would, with such interest, make up the sum paid in respect of estate duty, etc., but calculated from the date of death until the respective times when such duty, etc., was in fact paid. This more recent case of *re McEuen* can be taken as settling the way in which the rule laid down in *Allhusen v. Whittell* should be worked in practice.

EXAMPLE, APPLYING THE RULE OF THE MCEUEN CASE TO THE FOREGOING ESTATE. Find the sum which at date of death at 4 per cent. would amount to £4,000 on the date it was paid, assuming that to be 10th July, 1921. Find this as follows—

$$\frac{100}{100 + (4 \times \frac{181}{365})} \times £4,000 = £3,922 \text{ 4s. 0d.}$$

This amount is chargeable to capital and the balance

between this figure and the £4,000 = £77 16s. 0d. is chargeable to income, and represents 4 per cent. per annum on £3,922 4s. 0d. for 181 days. This is ignoring income tax, which in practice would have to be taken into account. The rule in the *McEuen* case is much more equitable than that in the *Allhusen* case.

APPORTIONMENT OF BONUS DIVIDENDS RECEIVED ON SHARES FORMING PART OF RESIDUE OF ESTATES LEFT IN TRUST. As to whether bonus dividends are all capital or all income depends upon what powers the company in which the shares are held, has to capitalize its profits. If it has power so to do, and declares a bonus dividend, giving the shareholders no option but to take such bonus in the form of shares, then such a dividend would be ALL CAPITAL, but where there *is* an option given to take the dividend either in shares or in cash, then THE TENANT FOR LIFE WOULD BE ENTITLED TO THE WHOLE OF THE DIVIDEND. The leading case on this point is *Bouch v. Sproule*, and the general principle laid down in that case was stated by the judge *In re Malam* as follows—

Bonus dividends, whether they are capital or income.

The rule in *Bouch v. Sproule* and other cases.

“When a testator or settlor directs or permits the subject of his disposition to remain as shares or stock in a company which has the power, either of distributing its profits as dividends, or of converting them into capital, and the company validly exercises this power, such exercise of the power is binding on all persons interested, under the testator or settlor, in the shares, and consequently what is paid by the company as dividend goes to the tenant for life, and what is paid by the company as capital or appropriated as increase of the capital stock in the concern enures to the benefit of all who are interested in the capital.”

This principle was further confirmed in the cases of *re Armitage* and *Palmer* ; *Palmer v. Cassel*.

Recent cases on this subject are *re Hatton* ; *Hockin v. Hatton* ; and *re Ogilvie*. In the former case, the bonus in dispute had, at the same time as it was declared out of the profits, been applied by the company as a set-off against uncalled portions of the shares. It was decided that the bonus was capital. In *re Ogilvie* the company had power to capitalize undivided profits held in reserve fund and distribute them as a bonus among the shareholders, and also to pay dividends or bonuses by the distribution of shares. For the purpose of capitalizing part of the undivided profits in the reserve fund a dividend was declared which was satisfied by the allocation of new shares to the shareholders so as exactly to absorb the profits the company wished to capitalize. It was held that the bonus shares were to be treated as capital of the estate to which the original shares belonged, notwithstanding the use of the word "dividend." The object of the company in issuing new shares having been expressly stated as being "to capitalize the undivided profits" appears to have been the deciding factor in this case. In *re Thomas* a large reserve fund was distributed among shareholders, partly in shares and partly in cash, and the decision was "that the scheme proceeded on the footing of a distribution of the reserve fund as undivided profits by way of dividend and not by way of reduction of capital ; that looking at the real transaction there was no intention to capitalize the reserve fund and that the shares and cash in the hands of the trustees must be treated as income and not as capital." The deciding factor in all these cases is whether the undivided profits have been

capitalized, or whether the distribution is by way of dividend. In *re Speir; Holt v. Speir* the same principle was followed, where a testatrix bequeathed the dividends, bonuses, and income of shares in a company to someone for life with remainder over, and the company after testatrix's death allotted fully-paid shares out of its undivided profits rateably amongst its shareholders, as bonus shares, and it was held that such shares were capital. The gift of "bonuses" to the life tenant would have carried cash bonuses, but not bonus shares issued in the form of fresh capital.

WHERE A LEGACY, OR RESIDUE, IS LEFT IN TRUST, AND THE LIFE TENANT IS AN INFANT, the trustees would (subject to directions in the will) maintain and educate the infant out of the income, and any surplus income would accumulate as CAPITAL until he attains twenty-one years of age.

Legacy in trust to an infant.

APPORTIONMENT BETWEEN CAPITAL AND INCOME, OF REPAIRS AND EXPENSES IN CONNECTION WITH PROPERTY HELD AS TRUST INVESTMENTS. The general rule is that ordinary repairs and expenses of managing and letting the property are charges against income, while any expenditure of a permanent character which improves the property, should be charged to capital. If heavy repairs are necessary, which should have been attended to in the testator's lifetime, the tenant for life could claim that these are proper charges against capital.

Apportionment of repairs and expenses in connection with property.

On the death of a life tenant, apportionment takes place of all dividends, interest, rents and other periodical receipts and payments up to the date of the life tenant's death, in the same manner as at testator's death; the portion accrued up to the death of the life tenant being income, and the portion subsequent to that date being capital.

Apportionment on death of life tenant.

Changes of
Investments
and
Apportion-
ment.

APPORTIONMENT IN CONNECTION WITH CHANGES OF INVESTMENTS DURING THE CONTINUANCE OF A TRUST. The Apportionment Act does *not* apply to changes of investments made during the continuance of a trust (*re Clarke*), so that when an investment is sold, the whole of the proceeds is CAPITAL, and in like manner, when an investment is purchased, the whole of the first dividend received is INCOME. This rule is not correct accountancy and is contrary to the method which would be adopted with such transactions in commercial accounts ; where, if an investment is sold, the proceeds WOULD BE apportioned between capital and revenue, the latter being credited with the amount of the interest accrued up to the date of sale, while capital would be credited with the balance ; and in the case of investments purchased, the first dividend would be apportioned, capital being credited with the proportion of it up to the date of purchase. In consequence of this rule, it behoves trustees to exercise great foresight and care when changing investments, and to have in view the keeping of as even a balance as possible between the life tenant and remainderman, by selecting as investments securities which have as nearly as possible the same interest accrued as those had which have been sold, otherwise the rule will act adversely on either the life tenant or remainderman. For instance, suppose trustees sold £10,000 of Railway debenture 4 per cent. stock half-way between dividend days. Following the above rule, the whole of the proceeds would be credited to CAPITAL, and the life tenant would be deprived approximately of three months' income on that investment. If the proceeds were invested in a security also half-way between dividends, the life tenant would hardly be affected as (again

following the rule) he would be entitled to the whole of the first dividend on the new investment. Suppose, however, the proceeds were invested in a security, the income from which would commence only at the date the money was advanced (e.g. a mortgage), then the life tenant would *lose* approximately three months' income therefrom. The reverse result would obtain if the investment sold had just passed its dividend period and the proceeds had been invested in securities **APPROACHING** dividend period, as in this case the life tenant would benefit at the expense of the remainderman.

Where the result of a change of investments, in consequence of this rule having to be followed, is to affect adversely the interest of the life tenant or remainderman to a *serious* extent, the aggrieved party should make application to the Court. The case of *Sir Robert Peel's Settled Estates*, where it was decided that, when trustees invest in railway preference stock **BETWEEN** the conclusion of the railway's half-year and the actual payment of the dividend, such dividend when received must all be credited to **CAPITAL**, appears to be an important exception to the foregoing rule, and should strengthen any application now made for apportionment to be made where either the life tenant or the remainderman is seriously affected by a change of investments.

*re Sir Robert
Peel's
Settled
Estates.*

The profits of a single ship company are **NOT** apportionable, and are capital or income according to whether the voyage was completed **BEFORE** or **AFTER** death, because such profits cannot be said to have been made until the vessel has arrived safely in dock.

Profits of
single ship
company
not appor-
tionable.

EXAMPLE.—A man who died 20th December, 1920, owned six shares in a single ship. The vessel completed

a voyage 31st December, 1920, therefore the whole of deceased's share of the profit of that voyage would be INCOME, whereas if the voyage had been completed BEFORE death, the whole of the profit would be CAPITAL.

If, however, shares are held in a company owning a fleet, e.g. The P. & O. Co., the dividends on such shares WOULD BE apportionable just like dividends from any other investment.

Specific bequest of an investment and apportionment.

If a testator makes a specific absolute bequest of an investment (e.g. my £1,000 consols) or of any other kind of income producing property, the income therefrom is apportionable (*Pollock v. Pollock*) unless the will specifically bequeaths the accrued income as well as the capital.

When in doubt credit capital or debit income.

To conclude this all important question of apportionment in trust accounts, whenever there is a doubt as to whether to credit income or capital with any sum received, or whether to debit income or capital with any sum paid, always err on the side of CREDITING CAPITAL rather than income, and DEBITING INCOME rather than capital, for in adopting such a course the amount in question is retained in hand.

Restriction of accumulation of income.

RESTRICTION OF ACCUMULATION OF INCOME. The accumulation of income under settlements is restricted to the life of the grantor or settlor; or a term of twenty-one years from the death of the grantor, settlor or testator; or the duration of the minority or minorities of any person or persons living at the death of the grantor, settlor or testator; or the duration of the minority or minorities only of any person or persons who under the limitations of the instrument directing the accumulations would, for the time being, if of full age, be entitled to the income directed to be accumulated. (See Law of Property Act, 1925, Secs. 164-166.)

CHAPTER VIII

INTESTACY

WHERE persons die without having made a will they are said to have died intestate. There may be partial intestacy, where a testamentary disposition is made of part only of the property which could have been disposed of by will. Intestacy or partial intestacy.

Where property is not disposed of by will, in both total and partial intestacies, it must be administered in accordance with the law on the subject, of which the following is a brief outline—

Where the death occurs on or after the 1st January, 1926, the law is that enacted by the “Administration of Estates Act, 1925,” which made drastic alterations in the law as it stood previously, introducing for the first time the following principles— Administration of Estates Act 1925.

1. No difference in the devolution of real and personal estate, which had previously devolved to the heir at law and next of kin respectively.

2. No distinction in the rights of sex, thus abolishing the preference hitherto enjoyed by males.

3. Preference to be given to relatives of the whole blood, where previously those of the half blood had ranked equally with those of the whole blood.

4. No relatives of more remote consanguinity than first cousins and their issue to participate.

The rules given in that Act are, briefly, as follows—

If the intestate leaves a husband or wife (with or without issue) the surviving husband or wife shall take— Intestate leaving husband or wife with or without issue.

(a) The personal chattels absolutely. (Personal chattels are defined in the Act by Section 55 (x).)

Intestate
leaving
husband or
wife with or
without issue
(contd.)

(b) In addition, the sum of £1,000 free of death duties and costs, with interest thereon at 5 per cent. per annum from the date of death until paid or appropriated. It follows, therefore, that when the net estate, after payment of duties and costs, and excluding the personal chattels, does not exceed £1,000, the surviving husband or wife will take the whole of the estate.

(c) Subject to the provisions under (a) and (b), the remainder of the estate (which is defined as "the residuary estate") is to be held upon trust, as follows—

If the intestate leaves no issue, for the surviving husband or wife to have the income therefrom for life.

If the intestate leaves issue, as to one half, for the surviving husband or wife to have the income therefrom for life, and as to the other half, in equal shares, between the children living at the intestate's death, who attain the age of 21 or marry under that age, and for all the issue living at the intestate's death, who attain the age of 21 or marry under that age, of any child of the intestate who predeceases the intestate. Such issue will take through all degrees according to their stocks the share which their parent would have taken if living at the intestate's death, i.e. "per stirpes." On the death of the surviving husband or wife, the half in which such surviving husband or wife has had a life interest will be divisible amongst the issue of the intestate in the same way as the foregoing.

If the intestate leaves issue, but no husband or wife, then the issue take all, as above.

Note 1.—That any money or property which has been paid to or settled on a child by the intestate, must

Intestate
leaving issue
but no
husband
or wife.

be taken into account in distributing the residue, and treated as part of the share to which such child is entitled, the value of such advance to be reckoned as at the date of the death of the intestate. This provision also applies to any benefit given to a child under a will, in cases of partial intestacy, which is a reversal of the old law.

2.—That if no child lives to attain a vested interest under these rules (i.e. attains the age of 21 or marries under that age), then the residuary estate of the intestate shall devolve as if the intestate had died without leaving issue living at the date of death of the intestate, the rules for which are as follows. (All these, of course, are subject to the interests of the surviving husband or wife given above (a), (b), and (c))—

(1) *If the intestate—*

Leaves no issue but both parents—

To the father and mother equally.

Intestate
leaving no
issue.

(2) *Leaves no issue but one parent—*

To that parent absolutely.

(3) *Leaves no issue or parent—*

To the following persons living at the date of death of the intestate in the following order, viz.:

Firstly, in equal shares to the brothers and sisters of the whole blood of the intestate, living at the date of death of the intestate, and the issue of any such brother or sister who predeceased the intestate (who would take their parent's share between them *per stirpes*), but not subject to the rule as to advancement in connection with distributions amongst the issue of an intestate. Failing that, then

Secondly, for the brothers and sisters of the half blood. Failing that, then

Thirdly, for the grandparents of the intestate living

at the date of death of the intestate, in equal shares.
Failing that, then

Fourthly, for the uncles and aunts of the intestate (being brothers or sisters of the whole blood of a parent of the intestate). Failing that, then

Fifthly, for the uncles and aunts of the intestate (being brothers or sisters of the half blood of a parent of the intestate). Failing that, then

Sixthly, for the surviving husband or wife absolutely.
Failing all the foregoing, then

Lastly, to the Crown, or to the Duchy of Lancaster or to the Duke of Cornwall, as the case may be, as *bona vacantia*, but the Crown or Duchy or Duke may provide out of the estate, for dependents, whether kindred or not, of the intestate, and other persons for whom the intestate might reasonably have been expected to make provision. It is understood that this is the present practice.

Note.—The same rules as those given under the foregoing paragraph “ firstly ” with regard to the division amongst the issue of relatives who predeceased the intestate, and, with regard to excepting advancement, apply also to the foregoing paragraphs, “ secondly,” “ fourthly,” and “ fifthly.”

Examples of
division on
intestacies.

Examples of division of intestates' estates under the foregoing rules, where the death occurs on or after 1st January, 1926—

A man dies, leaving chattels consisting of household furniture, £500, and net residue of realty and personalty excluding chattels, £4,500 :

(a) Leaving widow and one child over 21 years of age—

The widow receives chattels plus £1,000 absolutely
and income for life on $\frac{£4,500 - £1,000}{2} = £1,750.$

The child receives the balance £1,750 absolutely, and the other £1,750 at the widow's death.

(b) Leaving widow, one child over 21, one child under 21, and two grandchildren under 21, being children of a deceased child—

The widow receives as in (a).

The children, or their issue, take the balance (£1,750) equally between them. The share of the child under 21 (viz. $\frac{£1,750}{3}$) will be held in trust until

he attains 21 or marries. The two grandchildren will take their deceased parent's share between them (viz., half each of $\frac{£1,750}{3}$), which will be held in

trust until they are 21 or marry, whichever happens first. The reversion in the £1,750 in trust for the widow's life will be similarly divided when it falls in at the widow's death. (If the child under 21 dies before attaining that age or marrying, his share will fall in to the residue for division amongst the survivors.) (If one of the grandchildren died before attaining 21, its share would be held in trust for the surviving grandchild, and if such surviving grandchild died before attaining 21, then the whole share would fall into the residue for division amongst the surviving children or their issue, of the intestate.)

(c) Leaving no husband or widow, but child or children over 21 or married—

All to such child, or if more than one, equally between the children, children of a deceased child taking deceased parent's share between them.

(d) Leaving widow, no issue, and a brother—

Widow, all the chattels plus £1,000 and a life interest in the remainder, viz., £3,500.

Brother, reversion of the £3,500 at widow's death.

(e) Leaving widow and two children, one of whom has had £1,000 from the intestate during his lifetime, to advance him in life—

Widow : Chattels plus £1,000, plus life interest on half of remainder, £1,750.

Child not advanced : Half of £1,750 plus £1,000 advance = $\frac{2750}{2} = £1,375$.

Child advanced : Half of £1,750 plus £1,000 = £1,375, less advance £1,000 = £375.

In addition, each child would share equally in the reversion, subject to widow's life interest in £1,750.

It will be observed that the widow would not benefit by the bringing into hotchpot of the amount advanced. (*Kircudbright v. Kircudbright*.)

Notes. 1.—The child advanced should be debited with interest on the advance from the date of death to the date of distribution at the rate of 4 per cent. per annum.

2.—If the amount advanced during the lifetime of deceased exceeds the amount to which the child advanced would be entitled after bringing the advance into hotchpot, the advance would be ignored, and such child would not participate at all in the division of the residue.

(f) Leaving no relatives nearer than an uncle and two children of a deceased aunt (viz., cousins)—

The chattels would be sold. Assume they realized £500. The amount to divide is then £5,000.

Half to the uncle living, £2,500.

Half equally between the aunt's issue (viz., cousins), £1,250 each.

Summary of rules as to the devolution of property in intestacies for persons who died before 1st January, 1926.

Rules for
intestacies
where death
occurs before
1st January,
1926.

Real estate descended to the heir at law, subject to a surviving husband's estate for life in the whole, and a surviving wife's estate for life in one-third. If there were issue, the eldest son was the heir-at-law. Males were preferred to females. Relatives of the father were preferred to those of the mother.

Personal estate was divisible amongst the next of kin of equal degree of relationship to deceased, subject to the following—

If a man died intestate leaving a widow and *no* issue, the widow took all up to £500 (Intestates Act, 1890) and half the balance above that amount; the other half went to the next of kin in equal degree of relationship to deceased. If no next of kin, then the other half went to the Crown.

If a man died intestate leaving a widow and issue, the widow took one-third and the children the other two-thirds equally between them. If a child predeceased its father, leaving issue, such issue of the deceased child took equally between them the share which the parent would have been entitled to, if living.

If a man died intestate leaving no widow but a child or children, all went to the child or children equally, children of a deceased child taking their parent's share between them.

If a man or woman died intestate leaving neither widow nor husband or children, then all went to the next of kin in equal degree of relationship to deceased, and if no next of kin, then all went to the Crown.

If a wife died intestate leaving a husband, whether with or without children, the husband took the whole.

The following was the order in which the degrees of relationship were taken for persons entitled to personalty in intestacies, viz.—

Failing the husband, wife, children, and their descendants: (1) father, the whole; (2) mother, brothers, sisters, and children of deceased brothers and sisters equally; (3) grandfather; (4) grandmother; (5) uncles equally; (6) aunts equally; (7) cousins equally.

Intestates
Act, 1890.

Under the Intestates Act, 1890, it was provided that where a man died intestate leaving a widow and no children, the widow was entitled to the first £500, which had to be borne proportionately by realty and personalty, the realty being valued for the purpose at twenty years' purchase of the annual value. The widow was entitled to interest on the £500 at 4 per cent. per annum from the date of death to the date of payment.

Per stirpes.

The term *per stirpes* means "by the stem," and is applied when parties entitled to participate in estates claim by representation; e.g. children of a deceased child taking their parent's share between them.

Per capita.

The term *per capita* means "by the head," and is applied when parties entitled to participate in estates claim in their own right and not by representation, e.g., children taking their share of their father's estate in their own right between them.

ADVANCEMENT AND HOTCHPOT

Advance-
ment and
Hotchpot.

Advancement is an advance by a parent during his or her lifetime, to a child, of a portion of such child's share of the parent's estate, to which it would be entitled after the death of the parent. To constitute such an advance as an advancement, it must be more

than a casual payment. It must be a substantial sum; e.g. for the purpose of setting a child up in business. A premium paid for articling a child to a profession would be an advancement, but any sum paid for education would not.

Hotchpot is the bringing of an advancement (as Hotchpot. defined in the previous paragraph) into account (and of beneficial interests of a child under the will in cases of partial intestacy) if a child of an *intestate* or partially intestate parent wishes to share in the distribution of the estate. When an advance is brought into hotchpot, it is added to the amount of the estate distributable amongst the children, and deducted from the share of the child advanced. Example—

Amount to be distributed amongst four children, of whom one had £1,000 advanced during the parent's lifetime 							£6,000
Add amount advanced 							1,000
Amount to divide into fourths 							£7,000
							£1,750

The three children not advanced would each take £1,750, and the one advanced £1,750 less £1,000 = £750.

This rule applies only to intestacies and partial intestacies, unless a testator directed by his will that sums advanced must be brought into hotchpot.

The foregoing hotchpot rule operates only for the benefit of other children.

CHAPTER IX

THE BOOKS NECESSARY TO BE KEPT AND THE SYSTEM OF KEEPING THEM

The books
necessary
to be kept.

THE following three books of account must be kept—

(1) Journal ; (2) Cash Book ; (3) Ledger ;

and in large estates where there are life interests and settlements, and a large number of investments it is advisable to add the following—

Investment
register.

(a) An investment register in which all the investments would be listed, giving full particulars of each, although not necessary, is very useful as it enables the executors to ascertain at once whether all the income has been received, and also to compare the market prices of all the investments from time to time. On the next page is the style of ruling for such a book.

Rent roll.

(b) Where rents have to be collected, a rent roll book should be kept (on similar lines to the investment register) giving full particulars of all the property, valuation or cost of same, rents receivable and when due, and columns for the rents to be entered into when received.

Minute book.

(c) A Minute book should be kept, so that whenever the executors meet together, their decisions and deliberations may be recorded, and signed by each of them.

The three books recommended under (a), (b) and (c), are *not* books of account.

THE JOURNAL

The Journal.

Ordinary journal ruling is all that is necessary. The opening entries will be made through the journal

[illegible][illegible]

from the estate duty account, which should be taken as the basis for opening the books. After the opening entries have been made, the journal should be used for passing ledger transfers through, as, to make any entry from ledger account to ledger account without coming from an original book of record is not strictly in accordance with the principles of double entry. Many accountants, however, use the journal only for the opening entries, and make transfers in the ledger direct from account to account. In the examples given herein, ledger transfers have been made without the use of the journal.

A short summary (or epitome as it is called) of the will should be entered at the commencement of the journal by way of memorandum, and for purposes of reference when writing up the books, thus saving the necessity of continually turning up the will. Detailed copies of the estate duty accounts, residuary account and legacy and succession duty accounts should be made in the journal by way of memorandum, also for purposes of reference.

An example of the opening entries in the journal is shown on page 98.

THE CASH BOOK

The Cash
Book.

This should be ruled with three cash columns on each side as shown on page 94.

The income and capital columns are merely analysis columns of the "total bank" columns, showing the proportion of the receipts and payments which belong to income and capital respectively, and on each side the sum of the first two columns equals the amount of the third column.

Under this system ALL cash received must be paid into

JOURNAL

Date.	Particulars.	Ledger folio	Dr.			Cr.		
1925 Sept. 30	Sundry Assets <i>Dr.</i>							
	To Estate Account	1				3510	0	0
	2½% Consols, £5000, valued at 50%	2	2500	0	0			
	Cash in the house	3	10	0	0			
	Cash at the bank. Private account	4	500	0	0			
	Life Insurance ¼% United Kingdom Assurance Co.	5	500	0	0			
	<i>Being Assets left by testator, per estate duty ¼%.</i>		3510	0	0	3510	0	0
„	Estate account <i>Dr.</i>	1	120	0	0			
	To debts owing by deceased (details to be entered)	6				100	0	0
	To Funeral expenses (details to be entered)	7				20	0	0
	<i>Being liabilities of deceased per estate duty ¼%.</i>		£120	0	0	£120	0	0

the bank and ALL payments must be made by cheque. This rule should be rigidly adhered to in all estates, no matter what their size.

When this style of cash book is used, the balances in the bank, on income and capital accounts respectively, are ascertained at once, by taking out the balances of the respective columns. This is obviously an immense advantage.

One of the first things which an executor should do is to open a bank account in the names of the executors, by paying in the exact amount of cash found in the house. This should be done even if cash payments have been made out of this sum before the executors receive it. In such a case, suppose £30 were the amount found in the house, but £5 had been used for

Bank
Account.

necessary payments before it could be handed over to the executors, they should pay £30 into the bank, and draw a cheque for the £5 expenses. From that time onward, it is a simple matter to follow the rule of paying into the bank all amounts received and making all payments by cheque. For such expenses as postages, travelling expenses, etc., a petty cash book should be kept, into which full details must be entered. This book should be added up and a cheque drawn periodically for the exact amount disbursed.

Petty
Cash.

The "voucher number" column on each side of the cash book is for recording in numerical order the numbers of the vouchers, which should be carefully filed in the same order as the entries appear in the cash book, and the number placed conspicuously on the top right-hand corner of the voucher. For the entries on the debit side of the cash book, the dividend counterfoils, brokers' sold notes, etc., will be the vouchers, but there will not necessarily be a voucher for EVERY item on this side. On the credit side, however, there should be a receipt obtained and filed for each payment made, which should fully disclose the nature of such payments. All entries on both sides of the cash book should be fully described, and where there is apportionment, the respective periods allotted to capital and income should be stated.

Vouchers

In estates where the investments are numerous, considerable time and trouble are saved by instructing the companies and authorities who pay the dividends, etc., to remit direct to the bank for the credit of the executors' account.

Dividends
paid direct
to bank.

Where there is more than one executor, arrangements can be made with the bank for cheques to be signed by only one or two of the executors, who would

Signing
Cheques.

Endorsing
cheques.

sign "for self (or selves) and co-executor (or co-executors) of" Where there is more than one executor it is not advisable for one executor to have power to sign cheques alone, although there is nothing to prevent this being done if the other executors are willing to take the responsibility of leaving such a power in the hands of only one. For endorsements on cheques, dividend warrants, etc., the signature of *one* executor is sufficient. The endorsement when the cheques, etc., are made payable to "The Executors of....." would be "A.B. (Executor's signature) for self and co-executors of....."

THE LEDGER

The Ledger.

The ruling should be as shown on page 101.

Ledger
accounts.

The following are the ledger accounts which in most estates it will be necessary to open—

Estate
account.

ESTATE ACCOUNT (sometimes called "corpus" and sometimes "capital" account). This is the equivalent of a capital account in business books. The account is opened by posting thereto the totals of the opening entries from the journal, the balance then being brought down at that point, thus showing the figure upon which estate duty has been paid. The differences on realization of the assets, and such expenses as are charges against capital, are transferred to this account, and the balance ultimately represents the residue of the estate. When the time arrives for the residue to be distributed, the balance of this account will be transferred to the credit of the various residuary legatees' accounts in the proportions in which they are respectively entitled to share the residue.

Gr.

[illegible]

Investment
accounts.

INVESTMENT ACCOUNTS. A separate account should be opened for each investment, commencing with the market value of investments left by testator at the date of death, as valued for estate duty purposes. The amount paid for investments **PURCHASED** by the executors is posted to the debit, and the dividends received and the amount realized on sale are posted to the credit, from the cash book. The dividends received are credited to the income and capital columns as apportioned. When the investment is sold, the account will be closed by transferring the balance of the capital column to the estate account, and the balance of the income column to the income account. If the investment is retained, the capital column is left open as a balance, while the balance of the income column is transferred periodically to the credit of income account.

Debts due
account.

DEBTS DUE BY DECEASED ACCOUNT. To the credit of this account are posted in detail from the journal, all the debts owing by deceased at the date of death, and the cash is posted to the debit as they are paid.

Funeral
expenses
account.

FUNERAL EXPENSES ACCOUNT. The amount allowed for estate duty purposes will be posted in detail to the credit of this account from the journal, and the cash posted to the debit as paid. Any expenses not allowed for estate duty purposes (e.g. mourning or cost of tombstone), will be posted to the debit of this account from the cash book, and then transferred to the debit of estate account.

Testament-
ary expenses
account.

TESTAMENTARY EXPENSES ACCOUNT. To this account are posted all expenses (e.g. estate duty, costs of proving the will, etc.) which are charges against capital. This account is ultimately transferred to the debit of estate account.

LEGACIES ACCOUNTS. Pecuniary legacies, together with the legacy duties paid on them, are posted to the debit of this account from the cash book, and specific legacies are transferred to this account from the respective accounts in which they stand, at the value placed upon them for estate duty purposes, and if they were bequeathed free of duty, the duty paid thereon would also be posted to this account. The balance is ultimately transferred to the debit of estate account.

Legacies
account.

EXECUTORSHIP EXPENSES ACCOUNT. To this account are posted all expenses which are charges against income, and are expenses incurred in CARRYING ON the estate (e.g. accountants' charges for keeping or auditing the books, interest on estate duty or bank overdraft, etc.). This account is ultimately transferred to income account.

Execu-
torship ex-
penses
account.

INCOME ACCOUNT. This is the account to which are transferred all the balances of the income columns in each investment account, together with such accounts as executorship expenses; and the ultimate balance discloses the amount due to the tenant or tenants for life, and should agree with the balance of the income column in the cash book. The balance of this account should be transferred to the account of the tenant for life if there is only one, and if more than one, then to their respective accounts in the proportions in which they are entitled, under the will, to share in the income of the residue.

Income
account.

LIFE TENANTS' ACCOUNTS. A separate account should be opened for each life tenant, to the credit of which is transferred the proportion of the balance of the income account to which the life tenants are entitled respectively. The cash paid to them will be debited to their respective accounts.

Life tenants
accounts.

Annuitants'
accounts.

ANNUITANTS' ACCOUNTS. A separate account should be opened for each annuitant, to which should be posted the instalments paid to them. These should be apportioned between capital and income in accordance with the terms of the will (see page 72) and the balances of the income and capital columns periodically transferred to the income and estate accounts respectively. If the annuity is one which has to be purchased, and not paid out of the income of the estate, a separate account should be opened for this, and the cost transferred to estate and income accounts respectively, as apportioned.

Residuary
legatees'
accounts.

RESIDUARY LEGATEES' ACCOUNTS. A separate account should be opened for each residuary legatee, to the credit of which are transferred from the estate account the proportions of the residue to which each is entitled. The cash paid to them will be posted to the debit.

Other accounts may be necessary varying with the particular circumstances of each estate.

Full narrative of all entries made in the ledger accounts should be given.

Balance
Sheet.

During the continuance of a trust a **BALANCE SHEET** should be prepared periodically and copied into the ledger, setting out in detail the assets of the estate, and distinguishing therein between assets still held which were left by the testator (and which will be put into the balance sheet at the value placed upon them for estate duty purposes) and those which have been purchased by the executors.

On the next page is an example of a balance sheet.

Audit of
accounts.

Trustees may, in their absolute discretion, have the trust accounts examined or audited by an independent accountant, but not more than once in every three

BALANCE SHEET, 31ST DECEMBER, 1925
(Estate of A B who died 31st December, 1909)

<i>Liabilities and Capital.</i>		<i>Assets.</i>	
	Income.	Capital.	
Mortgage on 12 Cottages (4% p.a.)		1000 0 0	Investments left by deceased, at estate duty values, viz.—
Estate Account—			£5000 2½% Consols @ 80 % ..
Balance per last Balance Sheet (31st Dec., 1924) £19000			Real Property, 12 cottages situate 14-36 Carlton St., London ..
Less loss made on sale of £5000 L.M. & S. Rly. Stock 550		18450 0 0	Investments purchased by the Executors at cost—
Income Account—			£10000 L.M. & S. Rly. 3% Pref. Stock
Balance of Income for year to date.. £700			£5000 Manchester Corporation 3½% Stock
Less Amounts paid to life tenant on $\frac{a}{c}$.. 600	100 0 0		Cash in the Bank. On Capital Account
			„ Income „
	100 0 0	19450 0 0	
			Income.
			Capital.
			4000 0 0
			2400 0 0
			8000 0 0
			5000 0 0
			50 0 0
			100 0 0
			100 0 0
			19450 0 0

years, unless the nature of the trust or any special dealings with the trust property make more frequent audits reasonable. The costs of such audits may be paid out of capital or income at the absolute discretion of the trustees. (Sec. 22 (4), Trustee Act, 1925.)

System
on double
entry rules.

The system of book-keeping advocated is of course based upon the rules of double entry, a knowledge of which is assumed.

Another
System,

It should be added that there is another system of keeping executorship and trust accounts besides the one advocated herein, the main difference being in connection with the opening entries. Instead of opening the accounts of the assets with the valuations for estate duty purposes, these values are placed at the side of the accounts by way of memorandum only. On the following pages are examples of the same investment account kept on both systems.

A testator died 10th January, 1921, leaving his estate in trust, and amongst his assets is one investment of £5,000 worth of $2\frac{1}{2}$ per cent. Consols, valued for estate duty purposes at 46 per cent. The Consols were sold on 10th July, 1921, at $48\frac{7}{16}$ per cent.

The first illustration shows the account commenced with the estate duty valuation of the investment as a REAL BALANCE and is the system advocated, and the one on which the illustrations in this book are worked out. The second illustration shows the account on the other system, in which the estate duty valuation is only put in as a memo.

Both systems produce the same result, but the first has the advantage of showing the value of the estate (in the estate account) at the date of death and upon which estate duty has been paid; and by making real balances of everything, the possibility

(First illustration.)

INVESTMENT ACCOUNT 2½ % CONSOLS

Dr.

Date.	Particulars.	Folio.	Income.	Capital.		Income.	Capital.
1921 Jan. 10	To Estate $\frac{a}{c}$ — Value at date of death of £5000 2½ % Consols @ 46						
July 10	To Transfer to es- tate $\frac{a}{c}$, being pro- fit on realization	J. 1		2300 0 0			
" "	To Transfer to in- come $\frac{a}{c}$, pro- portion being in- come to date of realization ..	Led. 1		129 4 4			
		Led. 2	42 10 8			21 17 6	
					C.B. 1	20 13 2	1 4 4
					C.B. 2		
					C.B. 2		2428 0 0
			£42 10 8	£2429 4 4		£42 10 8	£2429 4 4

Cr.

(Second illustration.)

INVESTMENT ACCOUNT 2½ % CONSOLS.

Cr.

Dr.

Date.	Particulars.	Folio.	Income.	Capital.	Date.	Particulars.	Folio.	Income.	Capital.
1921 Jan. 10	Memo. £5000, 2½ % Estate Consols duty valuation @ 46 = £2300				1921 April 6	By Cash, quarter's dividend on £5000, 2½ % Consols £31 5 0 Less tax @ 6/- 9 7 6			
July 10	To Transfer to es- tate %, being amount of capital received on reali- zation of this in- vestment ..					5 days Capital, 85 days Income ..	C.B. 1	20 13 2	1 4 4
"	To Transfer to in- come %, being proportion of in- come to date of realization ..	Led. 1		2429 4	July 5	By Cash, quarter's dividend £31 5 0 Less tax 9 7 6	C.B. 2	21 17 6	
"		Led. 2	42 10 8		" 10	By Cash, proceeds of sale of £5000, 2½ % Consols @ 48 16 less com. ..			2428 0 0
			£42 10 8	£2429 4 4				£42 10 8	£2429 4 4

of any balance being overlooked is prevented. The estate account in the second system shows only the balance of so much of the estate as has been realized. One of the arguments used in favour of the second system is that the estate duty values are only fictitious and that therefore profits or losses on realization, which are shown by the first method, are misleading. The first method is now generally recognized and adopted in practice by the accountancy profession.

SIMPLE EXECUTORSHIPS WITH NO TRUSTS INVOLVED

Where estates are left in such a way that all the executors have to do is to realize everything, pay funeral expenses, debts, duties, legacies and expenses, and then divide the balance as directed by the will, the book-keeping is very simple, as in such a case there is no apportionment involved, and there is no necessity for capital and income columns in the cash book and ledger. The following is an example of such an estate—

Simple
executorship
where no
trusts
involved

John Robinson died 4th January, 1926, and appointed his widow sole executor of his will. The following are the directions of the will.—A pecuniary legacy of £1,000 to the widow, and one of £100 to his brother James. Household furniture and personal effects to the widow. Residue equally to his two children William and Mary (both of age).

The account for estate duty, given on the next page, shows the particulars of the estate.

The estate duty was paid 29th January, 1926. Rate of duty applicable (estates between £1,000 and £5,000) 3 per cent.

3% on £3045 10 0	=	£91 7 4
Interest thereon @ 4% p.a. January 4th to 29th,		
= 25 days	=	5 0
		£91 12 4

PERSONAL PROPERTY IN UNITED KINGDOM

Account No. 1.

Stocks or funds of United Kingdom.			
Consols 2½%, Nominal value £1000, Market price			
date of death 55 ex. div.	550	0	0
Dividends accrued in respect of above ¼ year's			
dividend Oct. 5-1925 to Jan. 4-1926=£6 5 0			
Less Income Tax @ 4/-			
	5	0	0
Cash in the house	10	10	0
" at Bankers on drawing account	200	0	0
Salary as manager accrued to date of death ..	50	0	0
Policies of life insurance, with bonuses thereon	2000	0	0
Household goods and personal effects, per			
valuation	300	0	0
Gross value of personalty	3115	10	0

Schedule No. 1.

Debts due from deceased; first part			
Dr. Jackson, Embury St., Man-			
chester, Medical attendance ..	£20	0	0
A. Jones, Turner St., Manchester,			
Butcher	5	0	0
G. Flour, Brown St., Manchester,			
Grocer	5	0	0
E. Green, Tower St., Manchester,			
Rent to date of death ..	10	0	0
P. Smart, Travers St., Manchester,			
Chemist	3	0	0
S. Stanley, Joclyn, Manchester,			
Tailor	7	0	0
	50	0	0
Second part; Funeral expenses			
S. Berry, Drake St., Manchester,			
Undertaker	20	0	0
		70	0 0
Net value of estate liable to estate duty ..			
		3045	10 0

CASH ACCOUNT SHOWING THE REALIZATION AND DISTRIBUTION OF THE ESTATE OF JOHN ROBINSON, WHO DIED 4TH JANUARY, 1926

Dr. Receipts.

Lancashire and Yorkshire Bank.

Payments.

Cr.

Date.	Particulars.	Vou- cher No.	Amount.	Date.	Particulars.	Vou- cher No.	Amount.
1926 Jan'y. 4	To Cash in the house	1	10 10 0	1926 Jan'y. 29	By Estate duty, 3 % on £3045 10 0		
" 5	" " " bank	2	200 0 0		25 days' interest 4 % p.a. = 91 7 4	1	91 12 4
"	" 1 year's dividend to date on £1000						
	2 1/2 % Consols = £6 5 0						
	Less Income Tax @ 4/- = 1 5 0						
Feb'y. 4	To Salary of deceased as manager of A. B. & Co. to date of death	3	5 0 0	Feb'y. 6	By Funeral Expenses—		
5	To Proceeds of sale of £1000, 2 1/2 % Consols @ 56 = £560 0 0	4	50 0 0		S. Berry, Undertaker £20 0 0	2	
	Less Brokerage, etc. = 2 10 0				J. Jones, Mourning 7 0 0	3	
	To Life Insurance and bonuses	5	557 10 0	" "	S. Smith, Gravestone 8 0 0	4	35 0 0
		6	2000 0 0		By Debts due at decease—		
					Dr. Jackson, Medical att. £20 0 0	5	
					A. Jones, Butcher 5 0 0	6	
					G. Flour, Grocer 5 0 0	7	
					E. Greese, Rent 10 0 0	8	
					P. Smart, Chemist 3 0 0	9	
					S. Stanley, Tailor 7 0 0	10	50 0 0
				" "	By Executorship Expenses—		
					T. Brown, Solicitor's costs £10	11	
					Executors' postages, Bank charges and Sundry expenses 2	12	12 0 0
				"	By Legacies—		
				28	Mary Robinson, Widow £1000	13	
					James Robinson, Brother £100		
					Less Legacy Duty 5 % 5		1095 0 0
					Legacy duty paid on brother's legacy	14	5 0 0
				" "	By Balance, being residue carried down for division		1534 7 8
							£2823 0 0
1926 Feb'y. 28	To Balance, being residue, brought down for division between the two children William and Mary equally		£2823 0 0	1926 March 5	By William Robinson, Son 1/4 residue	15	767 3 10
				" "	" Mary Robinson, Daughter 1/4 residue	16	767 3 10
							£1534 7 8

Memo.—The household furniture and personal effects of deceased, which were valued for estate duty purposes at £300, were bequeathed to the widow, whose receipt for same has been obtained.

In cases as simple and straightforward as the foregoing, only one book is necessary, into which should be entered: (1) A copy of the will. (2) A copy of the estate duty account. (3) The cash account. No ledger accounts would be necessary, as the cash account, if properly set out, would show the transactions clearly from beginning to end. The executor should pass all the transactions through the bank, so that the cash account would be a copy of the bank pass book. The account when completed should be submitted, with all the vouchers and the pass book, to the residuary legatees, who, after they have examined same, should sign a declaration at the foot of the account across a two-penny stamp, acknowledging receipt of the balance of residue, and stating that they have examined the accounts, and are satisfied therewith.

It will be noticed in the foregoing illustration that there is no legacy duty payable on the widow's legacies, nor on the residue bequeathed to the children, the reason being that the total estate is under £15,000. (See page 40.)

It will also be noticed that as the legacy of £100 to the brother is not left duty free, the legacy duty thereon is deducted from the amount paid to the brother.

Further examples of the same estate—

Suppose John Robinson had died intestate, and the estate was the same as in the last illustration. The amount to divide would be the amount shown in the foregoing account as paid to the pecuniary and residuary legatees, viz., £1,100 + £1,534 7s. 8d. = £2,634 7s. 8d.

(1) Assume he died intestate leaving the widow and two children—

To widow, the furniture and £1000 + life interest on £817 3 10

+ interest at 5% p.a. on the £1000 from date of death to date of payment.

To each child, $\frac{1}{2}$ of £817 3 10 = £408 11 11 + reversion in $\frac{1}{2}$ of £817 3 10.

(2) Assume he died intestate leaving a widow, one child living and three children of a child who predeceased the father—

To widow, as in (1).

To child living £408 11 11 + reversion in £408 11 11.

To each child of deceased child (*per stirpes*), $\frac{1}{3}$ of £408 11 11 + reversion in $\frac{1}{3}$ of £408 11 11.

(3) Assuming he died intestate leaving a widow, no children, one brother, and no other relatives—

To widow, household furniture + £1000 + life interest in the remainder £1634 7 8.

To brother, the reversion in the £1634 7 8.

EXAMPLE OF EXECUTORSHIP AND TRUST ACCOUNTS

Estate of Arthur Brown, who died 10th January, 1926, leaving a widow and two daughters.

EPITOME OF THE WILL

Executors and Trustees, the widow, Mary Brown, and brother, James Brown.

After payment of funeral expenses, debts and testamentary expenses, he bequeathed the following—

A legacy of £1,000 to James Brown, the brother.

„ „ „ £1,000 to Mary Brown, the widow.

„ „ „ £1,000 to National Society for Prevention of Cruelty to Children.

„ „ „ £100 to his servant, John Smith.

„ „ „ a picture “ Moonrise ” to the National Gallery.

„ „ „ a picture “ The Charmers ” to his friend, S. Toms.

„ „ „ his diamond ring to his cousin, T. Brown.

A Government annuity of £100 per annum to be purchased by the executors for his sister, Jane Brown,

and the whole of it from the date of death to be charged against capital.

The freehold house in which he lived, he devised to his wife absolutely.

The furniture, pictures, linen, plate, horses, carriages, motor-cars, and personal effects, with the exceptions of the specific bequests, he bequeathed to his wife absolutely.

The residue of the estate he left in trust for the widow's lifetime, the income therefrom to be paid to her, and on her death, the whole estate to be realized, and the proceeds divided equally between the two daughters (viz., Mary Brown and Helen Brown), and the Samaritan Society. If either of the children pre-deceases the mother, leaving issue, the children of deceased child to take the parent's share between them equally, *per stirpes*. If no issue of deceased child, then the whole of deceased child's share to the surviving child. If both children die before the mother, without issue, the whole to the Samaritan Society.

All legacies, devises and annuities (except residuary legacies) he directed should be paid free of *all* duties, except that a proviso was made that the widow's income should bear the legacy duty thereon.

The will directed that the rule in *Allhusen v. Whittell* should not apply, but that debts, legacies, etc., should be borne wholly by capital.

The following are the particulars of the property left by deceased—

Investments—

£7,090 18s. 2d. of $2\frac{1}{2}\%$ consols. Market price at date of death 55% cum div.

100 preference shares (5%) of £10 each in A. B. Co., Ltd. Market price at date of death, par, cum div.

Cash in the house, £30.

Cash in the bank on drawing account, made up to date of death, £100.

Life insurance policy with bonuses thereon, £5,000,

Household goods, pictures, china, linen, apparel, books, plate, jewellery, carriages, horses, motors, etc., per inventory and valuation made by W. Brown, professional valuer (including therein the value of the picture "Moonrise" bequeathed to the National Gallery at £500, the value of the picture "The Charmers" bequeathed to the friend, S. Toms, at £50, and the value of the diamond ring bequeathed to the cousin T. Brown, at £50) £6,000.

Leasehold property, twenty cottages on leasehold land situate 2-40 James street, Manchester, comprising 1,500 square yards. Term of lease 999 years from 1st January, 1850. Gross rentals £400 per annum. All let. Subject to a ground rent of £50 per annum, due half-yearly on 30th June and 31st December, last paid to 31st December, 1925. Valued by W. Brown, professional valuer at £2822 4 6 (Assessed for Income Tax under Schedule A at £330 net).

Subject to a mortgage due from deceased, created by an indenture dated 10th June, 1905, for which the leasehold property is the sole security. Interest at 4 % per annum, payable half-yearly on 30th June and 31st December, last paid up to 31st December, 1925.

1000 0 0

£1822 4 6

Rents of above property apportioned to date of

death, viz., 25th December, 1925, to 10th January, 1926, at £100 for quarter to 25th March, 1926 = £17 15s. 6d.

Freehold residence, owned and occupied by deceased, situate Craven Park, Liverpool, called "Crosslands," standing in grounds occupying 5,000 square yards, free from chief rent. Assessed for income tax Schedule A at £150 net, valued by W. Brown, professional valuer, at £3,500. Deceased had a merchanting business, of which he was sole owner. The following is the Balance Sheet as on the date of death, certified by professional accountants, including the goodwill, valued at that date—

<i>Arthur Brown, Merchant</i>			
Balance Sheet, 10th January, 1926			
<i>Liabilities and Capital.</i>		<i>Assets.</i>	
Creditors per list ..	£5000	Debtors, per list ..	£24000
Capital	60200	Stock-in-Trade ..	35000
		Bank	1000
		Fixtures	200
		Goodwill (valued at 3 years' purchase of the average profits) ..	5000
	<u>£65200</u>		<u>£65200</u>

Deceased also had an interest in another business, but in this case as a partner. The following is the Balance Sheet of this business signed by the surviving partners, and certified by professional accountants as at date of death—

<i>X. Y. Z. & Co., Merchants</i>			
Balance Sheet, 10th January, 1926			
<i>Liabilities and Capital.</i>		<i>Assets.</i>	
Creditors, per list ..	£3000	Debtors, per list ..	£8000
Bank overdraft ..	2000	Stock-in-Trade ..	8000
Partner X., Capital	£10000	Freehold premises at cost	5000
Partner A. Brown		Machinery, less depreciation	5000
(Testator) Capital	15000	Goodwill (as agreed in articles of partnership)	4000
	<u>25000</u>		
	<u>£30000</u>		<u>£30000</u>

Deceased had made a gift of £6,000 to his father, A. Brown, of 60 Statham Road, London, on 30th June, 1924. Deceased's private liabilities amounted to £100. The funeral expenses (without mourning or tombstone) amounted to £60.

From the foregoing particulars make up the account for estate duty purposes.

The following shows the account as it would be rendered to the Inland Revenue, filled up on the form appropriate (viz., A7).

ESTATE DUTY ACCOUNT. *Account No. 1*

FIRST PART.—PERSONAL PROPERTY

	Nominal value.	Market price at death.	Gross principal value at death.
Stocks or funds of the United Kingdom, viz., 2½ % Consols	£7090 18 2	55 (cum div.)	3900 0 0
Proprietary shares, etc., of public companies, viz.— 100, 5% preference shares of £10 each in A. B. Co., Ltd.	£1000 0 0	(par, cum div.)	1000 0 0
Cash in the house			30 0 0
" " bank. On drawing " % " (with interest to death)			100 0 0
Cash in the bank. On business % (per Balance Sheet) ..			1000 0 0
Book debts of deceased's business (per Balance Sheet) ..			24000 0 0
Policy of Insurance (and bonuses thereon) on life of deceased			5000 0 0
Household goods, pictures, china, linen, apparel, books, plate, jewels, carriages, horses, motors, etc., per valuation of W. Brown, professional valuer, and including £500 for value of the picture "Moonrise" bequeathed to the National Gallery ..			6000 0 0
Stock-in-trade (per Balance Sheet)			35000 0 0
Goodwill of deceased's own business (per Balance Sheet) (estimated at 3 years' purchase)			5000 0 0
Deceased's share in the real and personal property (as a partner) in the firm of X. Y. Z. & Co., per Balance Sheet annexed and signed by the surviving partners			15000 0 0
			Carried forward £96030 0 0

	Nominal value.	Market price at death.	Gross principal value at death.
Brought forward			£96030 0 0
Leasehold property (for years), viz., 20 cottages on leasehold land situate 2-40 James St., Manchester, comprising 1500 sq. yds. Term of lease 999 years from 1st January, 1850. Gross rentals £400 per ann. All let. Subject to a ground rent of £50 per annum, val- ued by W. Brown, profes- sional valuer. Valuation at- tached		£2822 4 6	
Less a mortgage debt due from deceased and created by an indenture dated 10th June, 1905, for which the said lease- hold property is the sole secu- rity. Interest 4 % per ann.		1000 0 0	1822 4 6
Apportionment of the rents of deceased's real and personal property to date of death per account attached			17 15 6
Other personal property not comprised under foregoing heads—			
Fixtures at deceased's business (per Balance Sheet) ..			200 0 0
Total personalty (gross)			£98070 0 0

SECOND PART.—REAL PROPERTY IN ENGLAND

Deceased's own freehold resi- dence "Crosslands," situate Craven Park, Liverpool, standing in grounds occupy- ing 5000 sq. yds., free from chief rent. The property is assessed for Income Tax (Schedule A) at £150 net. Valued by W. Brown, pro- fessional valuer, per valua- tion attached at			3500 0 0
Total aggregate gross value			£101570 0 0

SCHEDULE No. 1.—FIRST PART

An account of debts due and owing from deceased to persons resident in the United Kingdom or to persons resident out of the United Kingdom but contracted to be paid in the United Kingdom.

Name and Address of creditor.	Description of debt.	Amount.
Per list attached	Liabilities of deceased's own business per Balance Sheet	£5000 0 0
" "	Private liabilities (see ledger %c No. 12 for particulars)	100 0 0
		<u>£5100 0 0</u>

SECOND PART

An account of the funeral expenses of deceased—

Black & Co.	Undertaker (not including mourning)	£50 0 0
Per list attached	Sundries	10 0 0
		<u>60 0 0</u>
Total of debts and funeral expenses		<u>£5160 0 0</u>

Appropriate Account, marked "G."

Gift made to A. Brown of 60 Statham Road, London, father of deceased. Date of gift, 30th June, 1924, therefore liable to be brought into this account as a gift <i>inter vivos</i> made within 3 years of deceased's death		£6000 0 0
Gross personal property in account No. 1 ..	£98070 0 0	
Deduct first and second parts of Schedule No. 1, being for debts and funeral expenses	5160 0 0	
	<u>92910 0 0</u>	
Deduct value of picture "Moonrise" bequeathed to the National Gallery, estate duty on which the Treasury has agreed to remit	500 0 0	
Balance remaining carried to Part I of Summary ..	<u>£92410 0 0</u>	

SUMMARY OF AFFIDAVIT

Table for determining *rate* of Estate Duty.

	Net value of property.	
	Personal.	Real.
Personal property. Account No. 1, first part	£92410 0 0	
Real property. Account No. 1, second part		£3500 0 0
	<u>£92410 0 0</u>	<u>£3500 0 0</u>

<i>Add.</i> Other property aggregable with the property passing, in respect of which estate duty is not to be paid on this affidavit, viz., gift <i>inter vivos</i> per appropriate % marked "G."				£6000	0	0			
				£98410	0	0	£3500	0	0
Add realty to personalty ..				3500	0	0			
Value of estate for determining the rate of estate duty				£101910	0	0			

The appropriate rate of estate duty for estates between £100,000 and £120,000 is 20 per cent., which will, therefore, be paid on the personalty £92,410 on delivery of this account, say on 1st April, 1926, and assuming that the executors elected to pay the whole duty on the realty as well at the same time (in order to facilitate winding up the estate), the following are particulars of the estate duty which would be paid—

20% on the net personalty, liable to estate duty (viz., £92410)	=	£18482	0	0
Add interest at 4% per annum on £18482 (10th Jan., 1926, to 1st April, 1926 = 81 days) =		164	1	1
20% on the net realty (£3500) liable to estate duty (without interest)	=	700	0	0
		£19346	1	1

Note 1.—Estate duty on the gift *inter vivos* of £6,000 at 20 per cent. will have to be paid by the donee (who in this case is the father). Legacy duty is not payable on gifts *inter vivos*, although it is on a *donatio mortis causa*. The executors have fulfilled their duty by including such an item in their affidavit. It will be noticed what an important effect the inclusion of such an item may have on the duty payable on the whole estate, for in the foregoing account, the inclusion of the £6,000 gift *inter vivos* raises the rate payable on the whole estate from 19 per cent. to 20 per cent.

Without that item the net aggregate estate liable to estate duty would have been *under* £100,000.

Note 2.—The difference in filling up the form where deceased had a business of his own and where he was a partner, should be noticed. In the first case all the assets and liabilities have to be put in separately under their appropriate headings, whereas in the latter case, the amount is put in the form in one item only as “deceased’s share as a partner in the firm of ——— per balance sheet signed by the surviving partners.”

From the foregoing Estate Duty Account make the opening entries in the Journal, and open the necessary ledger accounts.

JOURNAL.

1926. Jan. 10		Led. folio.						
	Sundry Assets <i>Dr.</i>	1				97570	0	0
	To Estate Account ..	2	3900	0	0			
	Consols. £7090 18 2 of 2½% @ 55							
	A. B. Co., Ltd., 100 £10 shares	3	1000	0	0			
	(5 %) at par	4	30	0	0			
	Cash in the house	5	100	0	0			
	Parr’s Bank (private %) ..							
	Law Union & Rock Insurance							
	Co. Value of policy and	6	5000	0	0			
	bonuses							
	Household furniture, pictures,							
	plate, linen, apparel, books,							
	jewels, carriages, horses,							
	motors, etc., per valuation	7	6000	0	0			
	and inventory by W. Brown							
	Deceased’s own business.							
	Capital account including							
	Goodwill, per Balance Sheet	8	60200	0	0			
	at date of death							
	X. Y. Z. & Co. Deceased’s							
	share as a partner therein							
	per Balance Sheet at date of	9	15000	0	0			
	death							
	Leasehold property % 20							
	cottages, subject to a ground							
	rent of £50. Valuation by	10	2822	4	6			
	W. Brown							
	Leasehold property % Apportionment of rents to date of	10	17	15	6			
	death							
	Real property % Deceased’s							
	freehold residence “The							
	Crosslands” valuation by	11	3500	0	0			
	W. Brown							
	Being sundry assets left by de-							
	ceased per % rendered for							
	Estate Duty		£97570	0	0	£97570	0	0

JOURNAL (*contd.*)

1926. Jan., 10		Led. folio.				
			1	1100	0	0
	Estate $\frac{a}{c}$ Dr.					
	To Sundry Liabilities, viz.—					
	Mortgage on Leasehold pro-					
	perty	12			1000	0 0
	Debts owing by deceased					
	viz.—					
	Dr. Jones, Medical atten-	12			20	0 0
	dance	12			60	7 8
	Sundry household debts ..					
	Leasehold property viz.—					
	Income Tax accrued to date	12			17	12 7
	of death					
	Ground Rent accrued to date	12			1	2 1
	of death	12				
	Mortgage interest accrued to				17	8
	date of death	12				
	Being liabilities at date of					
	death, per $\frac{a}{c}$ rendered for		£1100	0	0	£1100 0 0
	Estate Duty					
	Estate $\frac{a}{c}$ Dr.	1	60	0	0	
	To Funeral expenses $\frac{a}{c}$.					
	Black & Co., Undertakers	13			50	0 0
	Sundries for grave, registrar					
	and other fees	13			10	0 0
	Being Funeral expenses per					
	$\frac{a}{c}$ rendered for Estate Duty		£60	0	0	£60 0 0

Note.—The epitome of the will and estate duty account will be copied into the journal.

The following are the particulars of the executors' transactions in connection with this estate up to the distribution of the residue, in accordance with the terms of the will, after the death of the tenant for life, who, it has been assumed, died on the 5th January, 1927.

1926.

- Jan. 10. Paid cash found in the house into an account at the Bank, opened in the names of the executors, as "Executors of Arthur Brown deceased."
- „ 19. Received A. B. Co., Ltd., dividend for 6 months to 31st Dec., 1925, less income tax @ 4/- (5% on £1000 for 6 months).
- April 1. Paid Estate Duty on Realty and Personalty together with interest on the latter to date.

1926.

- April 1. Paid Funeral expenses as follows—
 Black & Co., Undertakers £50.
 Repaid the Executors for fees and sundry expenses at the Funeral £10.
 H. Rhind & Co., Mourning £20.
 Ramsden & Co., Tombstone £50.
- " " Paid Debts owing by deceased, viz.—
 Dr. Jones, Medical attendance £20.
 Sundry household accounts £62 15 2.
- " 6. Received Dividend on £7090 18 2 of 2½% Consols for quarter year to 5th April, 1926, less income tax at 4/-.
- " " Received rents of leasehold property for quarter ending 25th March, 1926, £100.
- " " Transferred amount at the credit of deceased's private Bank $\frac{1}{2}\%$ to the executors' $\frac{1}{2}\%$ £100. Interest allowed up to the date of transfer was 10/-.
- " 10. Received Life Insurance money £5000.
- June 30. Received purchase money for sale of deceased's own business, which was sold at the figure shown in the Balance Sheet made out at deceased's death, viz., £60,200.
- " " Received interest on above purchase money at 5 % per annum from date of deceased's death to date of payment, less income tax @ 4/-, £1128 2 6
- " " Received amount of deceased's capital as a partner in the business of X. Y. Z. & Co. as shown by the Balance Sheet made out at deceased's death £15000.
- " " Received interest on foregoing partnership Capital at 5 % per annum from date of deceased's death to date of payment, less income tax @ 4/-, £281 1 11.
- " " Received rents of leasehold property for quarter ending 24th June, 1926, £100.
- " " Received proceeds of sale of leasehold property, which was sold by auction and realized £2700.
- " " Received apportionment of the rents of the leasehold property to date of sale, say £6 0 11.
- " " Paid ground rent and mortgage interest for leasehold property, both for ½ year to June 30th, 1926, less income tax at 4/-.
- " " Paid off Mortgage of £1000 on leasehold property.
- " " Paid apportionment of income tax on leasehold property from 5th April, 1926, to date of sale @ 4/- in £ on £330, say £15 11 0.
- " " Paid all the legacies and duties thereon.
- " " Purchased Government Annuity of £100 per annum for sister, Jane Brown, cost £2000.
- " " Paid Jane Brown (the sister) proportion of annuity of £100 per annum from date of testator's death to the date when the annuity was purchased, viz., 171 days. $\frac{171}{365}$ of £100 = £46 17 0, less income tax @ 4/-
- " " Paid legacy duty on sister's annuity.
- " " " " specific bequests.
- " " " " succession duty on specific devise of freehold residence to the widow.

- 1926.
- June 30. Bank charges and commission, all being charges in connection with transactions in respect to Capital £15, per pass book.
- " " Interest charged on executors' bank account to 30th June, £87 10 0 per pass book.
- " " Income Tax on leasehold property for $\frac{1}{2}$ year to 5th April, 1926, @ 4/- on £330. £33.
- July 2. Purchased £104,000 of $2\frac{1}{2}$ % Consols @ 55 % ex div. = £57200 plus commission and stamps £265, total cost £57465.
- " 3. Paid Law & Co., Solicitors, costs of proving the will, etc., £150.
- " " Paid Adder & Co., Accountants' charges for preparing estate duty account, opening the books, etc., £105.
- " 5. Received quarter's dividend on £7090 18 2 Consols, $2\frac{1}{2}$ % less income tax at 4/-.
- " 19. Received 6 months' dividend on £1000 @ 5 % p.a. in A. B. C. Co., Ltd., for $\frac{1}{2}$ yr. to 30th June, 1926, less income tax at 4/-.
- " 21. Received proceeds of sale of £1000, 5 % preference shares in A. B. C. Co., Ltd., sold at par without any brokerage payable. £1000.
- Oct. 5. Received quarter's dividend on £111,090 18 2 of $2\frac{1}{2}$ % Consols, less income tax at 4/-.
- 1927.
- Jan. 5. Life tenant died on this date.
- " " Received quarter's dividend to date on £111,090 18 2 $2\frac{1}{2}$ % Consols, less income tax at 4/-.
- " " Bank interest allowed to date on executors' bank $\frac{a}{c}$ per pass book, which would be made up and ruled off at date of life tenant's death, viz., £15 16 7.
- " " Bank Commission and charges on executors' bank $\frac{a}{c}$ per pass book, £42 of which is in respect of capital items, and £12 in respect of income items, viz., £54.

Note.—Apportionment of bank charges and commission should be made only where the capital transactions through the bank have been large, as in this example. The bankers should be consulted as to how the charges have been made, in order to ascertain how they should be apportioned.

- 1927.
- Jan. 15. Received £34 for return of income tax on bank interest *paid*. This is recoverable owing to all the income received having income tax deducted before receipt, and interest on a bank overdraft is an item which can be deducted from income for income tax purposes.

1927.

- Jan. 15. Paid the legal personal representative of the widow the balance of income up to the date of her death Jan. 5th, 1927.

Rule off the cash book at this point, and bring the balances down.

- Jan. 15. Received proceeds of sale of £111,090 18 2 of 2½ % Consols sold at 54 %, which after deducting brokerage, etc., realized £59711 7 4.
- „ „ Bank interest allowed to date from 5th Jan. to date of closing the $\frac{a}{c}$ £5.
- „ „ Bank commission and charges from 5th Jan. to date of closing the account £20.
- „ „ Paid Law & Co., Solicitors, for costs in connection with the passing of the residuary account £30.
- „ „ Paid Adder & Co., Accountants' charges for preparing the residuary account £21.
- „ „ Paid legacy duty on the life tenant's income, viz., 1% on £2429 14 11 = £24 5 11.
- „ „ Paid the three residuary legatees, viz., Mary Brown, daughter, Helen Brown, daughter, and the Samaritan Society, one-third each of the balance of the residue of the estate now remaining, less legacy duty at the rate for which they are respectively liable.
- „ „ Paid to the Inland Revenue the legacy duty deducted from the residuary legatees' shares of the residue.

The following are the cash book and ledger of this estate as they should be kept by the executors, showing the foregoing transactions worked out.

CASH BOOK AND
LEDGER ACCOUNTS

CASH BOOK OF THE EXECUTORS OF ARTHUR

Dr.

EXECUTORS

Date Received.	Particulars of Receipts.	Voucher No.	Led. Fol.	Proportion being Income.	Proportion being Capital.	Total Paid to Bank.
1926. Jan. 10	To Cash found in house and on deceased's person		4		30 0 0	30 0 0
" 19	" A. B. Co., Ltd., 6 months' dividend on £1,000—5 % Pref. Shares to 31st Dec., 1925 £25 0 0 Less Income Tax at 4s. 5 0 0					
April 6	" Consols: Quarter's Dividend on £7090 18 2 2½% Consols=44 6 4 Less Income Tax at 4s. 8 17 3 5 days' Capital, 85 days' Income £35 9 1	1	3		20 0 0	20 0 0
" "	" Leasehold Property: Quarter's Rents to 25th March, 1926 £100 Dec. 25th-Jan. 10th = 16 days' Capital, Jan. 10th-Mar. 25th = 74 days Income		10	82 4 6	17 15 6	100 0 0
" "	" Cash from deceased's Bank A/c transferred on production of Probate		5		100 0 0	100 0 0
" "	" Interest on deceased's Bank A/c		14	10 0		10 0
" 10	" Life Insurance money received	2	6		5000 0 0	5000 0 0
June 30	" Amount received for sale of deceased's own business (including Goodwill), which was taken over as from date of death.. ..	3	9		60200 0 0	60200 0 0
" "	" Interest on purchase money of deceased's business, viz., £60,200 at 5 % p.a., Jan. 10th-June 30th £1410 3 2 Less Income Tax at 4s. 282 0 8		4	9	1128 2 6	1128 2 6
	Forward			1244 6 8	65369 14 11	66614 1 7

BROWN. DIED 10TH JANUARY, 1926

1

BANK ACCOUNT

Cr.

Date of Pay- ments.	Particulars of Payments.	Vou- cher No.	Led. Fol.	Proportion being Income.			Proportion being Capital.			Total drawn from Bank.		
1926. April 1	By Testamentary ex- penses— Estate Duty 20 % on £92,410 Personalty ..	1	15				18482	0	0			
	Interest on ditto, 81 days at 4% p.a. ..	"	"	164	1	1						
	Estate Duty 20 % on £3,500 Realty ..	"	"				700	0	0			
" "	Cheque drawn for above Funeral Expenses A/c— Black & Co., Under- takers ..	2	13				50	0	0	19346	1	1
	Sundry Fees, etc., paid by Executors for the Funeral ..	3	13				10	0	0	10	0	0
	K. Rhind & Co. for Mourning ..	4	13				20	0	0	20	0	0
	Ramsden & Co. for Tombstone ..	5	13				50	0	0	50	0	0
" "	" Debts owing by de- ceased— Dr. Jones, Medical At- tendance ..	6	12				20	0	0	20	0	0
	Sundry household A/cs (details of these would be entered here) ..	7	12				62	15	2	62	15	2
June 30	" Income Tax, Sch. A, on Leasehold Property ½ yr. to Apr. 5th, 1926, at 4s. on £330 = £33. 280 days' Capital (Apr. 5th-Jan. 10th), 85 days' Income (Jan. 10th-Apr. 5th) Less £33 paid ..	8	10	15	7	5	17	12	7	33	0	0
" "	" Leasehold Property A/c Ground Rent ½ yr. to June 30th £25 0 0 Less Inc. Tax at 4s. 5 0 0 10 days' Capital (Dec. 31st- Jan. 10th); 171 days' In- come (Jan. 10th-June 30th) .. £20 0 0	9	10	18	17	11	1	2	1	20	0	0
	Forward			198	6	5	19413	9	10	19611	16	3

Date Re- ceived.	Particulars of Receipts.	Vou- cher No.	Led. Fol.	Proportion being Income.	Proportion being Capital	Total Paid to Bank.
1926. June 30	Brought forward .. To Amount received for deceased's share as a Partner in the firm of A. B. Co. Amount of Capital at deceased's death per Balance Sheet	5	8	1244 6 8	65369 14 11	66614 1 7
" "	" Interest on Share of Capital as a Partner in A. B. Co., viz., £15,000 at 5 % p.a., Jan. 10th- June 30th £351 7 5 Less Income Tax at 4s. 70 5 6	6	8	281 1 11	15000 0 0	15000 0 0
" "	" Leasehold Property, Quarter's Rents to 24th June	10		100 0 0		100 0 0
" "	" Leasehold Property A/c—Amount received for sale of same ..	7	10		2700 0 0	2700 0 0
" "	" Do. Apportionment of Rents, viz., 6 days, June 24th-30th ..	8	10	6 0 11		6 0 11
	Forward			£1631 9 6	£83069 14 11	£84701 4 5

Date of Payments.	Particulars of Payments.	Voucher No.	Led. Fol.	Proportion being Income.	Proportion being Capital.	Total drawn from Bank.
1926. June 30	Brought forward ..			198 6 5	19413 9 10	19611 16 3
	By Leasehold Property A/c.					
	Mortgage Interest $\frac{1}{2}$ yr. on £1,000 at 4 % p.a. to June 30th ..					
	£20 0 0					
	Less Inc. Tax £4 0 0					
	10 days' Capital (Dec. 31st to Jan. 10th); 171 days' Income (Jan. 10th to June 30th) ..					
	£16 0 0					
		10	10	15 2 4	17 8	16 0 0
" "	" Leasehold Property A/c. Repayment of Mortgage ..	11	12		1000 0 0	1000 0 0
" "	" Leasehold Property A/c. Apportionment of Income Tax, April 5th-June 30th = 86 days at 4s. in £ on £330 ..	12	1	15 11 0		15 11 0
" "	" Legacies Account—Widow, Mary Brown ..	13	16		1000 0 0	1000 0 0
	Legacy Duty thereon at 1 % ..	"	"		10 0 0	10 0 0
	Brother, James Brown	14	"		1000 0 0	1000 0 0
	Legacy Duty thereon at 5 % ..	"	"		50 0 0	50 0 0
	National Socy. Prev. Cruelty to Children ..	15	"		1000 0 0	1000 0 0
	Legacy Duty thereon at 10 % ..	"	"		100 0 0	100 0 0
	John Smith, Servant ..	16	"		100 0 0	100 0 0
	Legacy Duty thereon at 10 % ..	"	"		10 0 0	10 0 0
	Jane Brown, Sister, purchase of Government Annuity of £100 per ann. ..	17	16		2000 0 0	2000 0 0
" "	" Jane Brown, proportion of Annuity from Testator's death, Jan. 10th to June 30th, date of purchase of Annuity, viz., 171 days at £100 per ann. = £46 17s. Less tax at 4s. ..	"	16		37 9 7	37 9 7
" "	" Legacy Duty thereon at 5 % ..	"	16		101 17 6	101 17 6
" "	" Legacy Duty on Specific Bequest of Picture "The Charmers" to friend, S. Toms, valued at £50 at 10 % ..	18	16		5 0 0	5 0 0
" "	" Legacy Duty on Specific bequest of Diamond Ring to Cousin, T. Brown, valued at £50, at 10 % ..	19	16		5 0 0	5 0 0
	Forward ..			228 19 9	25833 14 7	26062 14 4

Data Received.	Particulars of Receipts.	Voucher No.	Led. Fol.	Proportion being Income.			Proportion being Capital.			Total Paid to Bank.		
1926. July 5	Brought forward.. To Consols, Quarter's Dividend on £7,090 18 2 £44 6 4 Less Income Tax at 4s. 8 17 3			1631	9	6	83069	14	11	84701	4	5
" 19	" A. B. C. Co., Ltd., 6 months' dividend on £1,000, 5 % Pref. Shares to 30th June £25 0 0 Less Income Tax at 4s. 5 0 0 10 days' Capital (Dec. 31st-Jan. 10th); 171 days' Income, (Jan. 10th to June 30th) .. £20 0 0		2	35	9	1				35	9	1
" 21	" A. B. Co., Ltd., Proceeds of Sale of £1,000 5 % Pref. Shares at par ..											
Oct. 5	" Consols: Quarter's Dividend on— £111,090 18 2, 2½ % Consols £694 6 4 Less Income Tax at 4s. 138 17 3	10	3				1000	0	0	1000	0	0
1927. Jan. 5	" Bank Interest to date of Widow's death ..		2	555	9	1				555	9	1
" "	" Consols: Quarter's Dividend on— £111,090 18 2, 2½ % Consols £694 6 4 Less Income Tax at 4s. 138 17 3		14	5	0	0				5	0	0
" 15	" Income Tax recovered on bank interest paid, viz., 4s. in £ on £170 =		2	555	9	1				555	9	1
			14	34	0	0				34	0	0
				£2835	14	8	£84070	17	0	£86906	11	8

Date of Payments.	Particulars of Payments.	Voucher No.	Led. Fol.	Proportion being Income.	Proportion being Capital.	Total drawn from Bank.
1926. June 30	Brought forward .. By Succession Duty on Specific Devise of deceased's own Residence, "Crosslands," valued at £3,500, to Widow, at 1 % ..			228 19 9	25833 14 7	26062 14 4
" "	" Legacy Duty on Specific bequest of Household Furniture, linen, plate, pictures, jewellery, horses, carriages, motors, etc., to Widow, at 1 %; Valuation £6,000, less Specific bequests £600 ..	20	16		35 0 0	35 0 0
" "	" Bank Charges, Comm. on Cheques from Capital	21	"		54 0 0	54 0 0
" "	" Bank Interest on overdraft	—	14		15 0 0	15 0 0
July 2	" Consols £104,000, 2½ % Consols, purchased ex div. at 55 % £57200 0 0 Commission and Stamps 265 0 0	—	"	175 0 0		175 0 0
" 3	" Testamentary Expenses— Law & Co., Solicitors' Costs, proving Will, etc. Adder & Co., Accountants' Charges, preparing Estate Duty A/c, opening the books, etc.	22	2		57465 0 0	57465 0 0
1927. Jan. 5	" Bank Charges, Commission on Cheques from June 30th, 1911, to date of Widow's death	23	15		150 0 0	150 0 0
" 15	" Widow's representative. Balance of Income to date of death .. £2429 14 11 Less Legacy Duty thereon at 1 % 24 5 11	24	15		105 0 0	105 0 0
" "	" Balances, at date of Widow's death, carried down	14		2 0 0	52 0 0	54 0 0
" "	" Balances, at date of Widow's death, carried down	25	17	2405 9 0		2405 9 0
" "	" Balances, at date of Widow's death, carried down			24 5 11	361 2 5	385 8 4
				£2835 14 8	£84070 17 0	£86906 11 8

Dr.

Date Re- ceived.	Particulars of Receipts.	Vou- cher No.	Led. Fol.	Proportion being Income.			Proportion being Capital.			Total Paid to Bank.		
1927. Jan. 15	To Balances brought for- ward at date of Widow's death		C.B. 3	24	5	11	361	2	5	385	8	4
" "	" Consols: Proceeds of Sale of £111,090 18 2						59711	7	4	59711	7	4
	2½% Consols at 54%, Less Brokerage, etc. . .		2				5	0	0	5	0	0
" "	" Bank Interest to date..		14									
				£24	5	11	£60077	9	9	£60101	15	8

NOTES.

(1) On the death of the Life Tenant (viz., the widow) the Apportionment Act applied again, and if there had been any receipts or payments made subsequent to her death covering any period *prior* to that date, they would have had to be apportioned, but no apportionment *was* necessary in the example given, the whole estate having been converted into Consols and the widow having died on the date on which the last dividend from Consols was due

Date of Payments.	Particulars of Payments.	Voucher No.	Led. Fol.	Proportion being Income.	Proportion being Capital.	Total drawn from Bank.
1927.						
Jan. 15	By Testamentary expenses, Law & Co., Costs of Residuary A/c and winding up Estate ..	26	15		30 0 0	30 0 0
" "	" Do. Adder & Co., Accountants' charges <i>re</i> Residuary A/c and winding up generally .	27	15		21 0 0	21 0 0
" "	" Bank Charges to date of closing the A/c ..		14		20 0 0	20 0 0
" "	" Widow's Legacy Duty on £2429 14 11, Income at 1 %.. ..	28	17	24 5 11		24 5 11
" "	" Mary Brown, Daughter, one-third share of Residue £20002 3 3 Less 1 % Legacy Duty . 200 0 5	29	18		19802 2 10	19802 2 10
" "	" Helen Brown, Daughter, one-third Share of Residue £20002 3 3 Less 1 % Legacy Duty 200 0 5	30	19		19802 2 10	19802 2 10
" "	" The Samaritan Society, one-third Share of Residue £20002 3 3 Less 10 % Legacy Duty 2000 4 4	31	20		18001 18 11	18001 18 11
" "	" Legacy Duties on Residue— 1 % on Mary Brown's Share .. £200 0 5 1 % on Helen Brown's Share .. 200 0 5 10 % on Samaritan Society's Share .. 2000 4 4	32 33 34	18 19 20		2400 5 2	2400 5 2
				£24 5 11	£60077 9 9	£60101 15 8

(2) Legacy Duty is payable on the life interest which the widow had in the income at 1 %, the estate being over £15,000.

(3) Instead of the Consols being sold at a loss as shown in the example, the trustees might have sold sufficient to pay the legacy duties on the Residue and have transferred the balance of the Consols themselves by power of attorney to the Residuary Legatees in the proportions to which they were entitled, valuing the Consols at the market price of the day when they were transferred.

EXECUTORS OF ARTHUR BROWN,
LED
ESTATE

Dr.

1926.									
Jan. 10	To Sundry Liabilities per Estate Duty A/c, viz.—	J.							
	Mortgage Leasehold Property ..	2	1000	0	0				
	Sundry probate debts	"	100	0	0	1100	0	0	
" "	" Funeral Expenses per Estate Duty A/c	J.							
" "	" Balance carried down viz.— ..	2				60	0	0	
	Amount upon which Estate Duty was paid £95,910								
	Add Value of picture bequeathed to the Nation, which is not liable to Estate Duty £500								
						96410	0	0	
						97570	0	0	
1927.									
Jan. 15	To Transfer from Consols A/c.	Led.							
	Loss on sale of same	2				1651	13	3	
" "	" Transfer from Leasehold Property A/c. Loss on sale ..	Led.							
" "	" Transfer from Testamentary Expenses A/c—	10				122	4	6	
	Estate Duty £19182								
	Expenses 458	15				19640	0	0	
" "	" Transfer from Legacies, Annuities and Devises A/c	16				14637	9	7	
" "	" Ditto Duties on same	"				370	17	6	
" "	" Transfer from Debts Due at Death A/c, excess of debts per Estate Duty A/c	12				2	7	6	
" "	" Balance carried down for division between the Residuary Legatees					60006	9	9	
						96431	2	1	
1927.									
Jan. 15	To Transfer to the Residuary Legatees, (divided according to the Testator's will), viz.—	Led.							
	Daughter, Mary Brown, one-third	18				20002	3	3	
	" Helen Brown, one-third	19				20002	3	3	
	The Samaritan Society, one-third	20				20002	3	3	
						60006	9	9	

DIED 10TH JANUARY, 1926.

GER.

ACCOUNT.

Cr.

1926.										
Jan. 10	By Sundry Assets, per Estate									
	- Duty A/c, viz.—	J.								
	Consols	1	3900	0	0					
	A. B. C. Co., Ltd.	"	1000	0	0					
	Cash in house.. ..	"	30	0	0					
	" " bank	"	100	0	0					
	Life Insurance.. ..	"	5000	0	0					
	Furniture, etc.. ..	"	6000	0	0					
	Deceased's business	"	60200	0	0					
	X. Y. Z. & Co... ..	"	15000	0	0					
	Leasehold Property	"	2840	0	0					
	Deceased's Residence... ..	"	3500	0	0					
						97570	0	0		
						97570	0	0		
1926.										
Jan. 10	By Balance brought down					96410	0	0		
1927.										
Jan. 15	„ Transfer from A. B. Co., Ltd.,	Led.								
	proportion of dividend to date									
	of death	3				21	2	1		
						96431	2	1		
1927.										
Jan. 15	By Balance brought down for divi-									
	sion between the Residuary Le-					60006	9	9		
	gates, per residuary account									
						60006	9	9		

2½ % CONSOLS

Dr.		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c— Value at date of death of £7090 18 2 Consols 2½ % @ 55	J. 1			3900	0	0
July 2	„ Cash: Purchase of £104,000 of 2½ % Consols @ 55 % ex div. £57200 0 0 Commission, etc. 265 10 0	C.B. 2			57465	0	0
1927.							
Jan. 5	„ Transfer to Widow's Income A/c, being Income to date of her death	Led. 17	1179	16	11		
			1179	16	11	61365	0 0
1927.							
Jan. 5	To Balance brought down at Life Tenant's death, viz.— Estate Duty, value of £7,090 18 2 Consols 3898 0 7 Cost value of £104,000 Consols .. £57465 0 0					61363	0 7
„ „						61363	0 7

3

A. B. CO., LTD.,

Dr.		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c— Value at date of death of 100 £10 Pref. Shares, 5 % @ par ..	J. 1			1000	0	0
1927.							
Jan. 5	„ Transfer to Widow's Income A/c, being Income to date of sale of these Shares	Led. 17	18	17	11		
„ „	„ Transfer to Estate A/c, propor- tion of dividend being Capital..	Led. 1				21	2 1
			18	17	11	1021	2 1

INVESTMENT ACCOUNT.

		Income.			Cr. Capital.		
1926.							
April 6	By Cash : Quarter's Div. on £7,090 18 2 .. £44 6 4 Less Tax @ 4s. .. 8 17 3						
	5 days' Capital, 85 days' Income .. £35 9 1	C.B. 1	33	9	8	1	19 5
July 5	" Cash : Quarter's Div. on £7,090 18 2 .. £44 6 7 Less Tax @ 4s. .. 8 17 3	C.B. 2	35	9	1		
Oct. 5	" Cash : Quarter's Div. on £111,090 18 2 .. £694 6 4 Less Tax at 4s. .. 138 17 3	"	555	9	1		
1927.							
Jan. 5	" Cash : Quarter's Div. on £111,090 18 2 .. £694 6 4 Less Tax at 4s. .. 138 17 3	"	555	9	1		
" "	" Balance carried down at Life Tenant's death					61363	0 7
			1179	16	11	61365	0 0
1927.							
Jan. 15	By Cash, proceeds of sale of £111,090 18 2 2½% Consols @ 54 % less Commission ..	C.B. 3				59711	7 4
" "	" Loss on sale transferred to Estate A/c	Led. 1				1651	13 3
						61363	0 7

INVESTMENT ACCOUNT.

		Income.			Cr. Capital.		
1926.							
Jan. 19	By Cash : 6 months' Div. on £1,000 @ 5 % p.a. to Dec. 31st, 1925 £25 0 0 Less Tax @ 4s. .. 5 0 0						
	All Capital £20 0 0	C.B. 1				20	0 0
July 19	" Cash, 6 months' Div. on £1,000 @ 5 % p.a. to June 30th, 1926 .. £25 0 0 Less Tax @ 4s. .. 5 0 0						
	Capital, 10 days; Income, 171 days £20 0 0	C.B. 3	18	17	11	1	2 1
" 21	" Cash, proceeds of sale of 100 £10 Shares at par	"				1000	0 0
			18	17	11	1021	2 1

4

CASH IN THE

Dr.

		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, amount found in the house	J. 1			30	0	0

5

PARR'S BANK.—DECEASED'S

Dr.

		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, amount at the Bank	J. 1			100	0	0

6

LAW UNION AND ROCK

Dr.

		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, amount insured under Policy No. 1234567 with bonuses	J. 1			5000	0	0

7

HOUSEHOLD FURNITURE,

Dr.

		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, being value of Deceased's Household Goods, Pictures, China, Linen, Apparel, Books, Plate, Jewellery, Horses, Carriages, and Motor Cars, etc., per Inventory and Valuation by W. Brown, and including the following values of the Specific Bequests— Picture "Moonrise" to National Gallery £500 Picture "The Charmers" to S. Toms £50 Diamond ring to Cousin £50 Remainder to Widow £5400	J. 1			6000	0	0
					6000	0	0

8

ACCOUNT OF DECEASED'S SHARE AS A

Dr.

		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c— Deceased's Share, including Goodwill, as a Partner in X. Y. Z. & Co. per Balance Sheet made up to deceased's death and signed by surviving Partners	J. 1			15000	0	0
June 30	" Transfer to Widow's Income A/c, being Interest up to date of repayment	Led. 17	281	1 11			
			281	1 11	15000	0	0

HOUSE ACCOUNT.

4

					Income.			Cr. Capital.		
1926.										
Jan. 10	By Bank	C.B.	1					30	0	0

PRIVATE ACCOUNT.

5

					Income.			Cr. Capital.		
1926.										
April 6	By Amount transferred to Execu- tors' Bank A/c	C.B.	1					100	0	0

INSURANCE CO., LTD.

6

					Income.			Cr. Capital.		
1926.										
April 10	By Cash	C.B.	1					5000	0	0

ETC., ACCOUNT.

7

					Income.			Cr. Capital.		
1926.										
June 30	By Transfer to Legacies A/c— National Gallery, value of Pic- ture "Moonrise"	Led.	16					500	0	0
" "	" S. Toms, value of picture "The Charmers"	"	"					50	0	0
" "	" S. Brown, cousin, value of Diamond Ring	"	"					50	0	0
" "	" Widow, value of the remainder bequeathed to her	"	"					5400	0	0
								6000	0	0

PARTNER IN THE FIRM OF X. Y. Z. & CO.

8

					Income.			Cr. Capital.		
1926.										
June 30	By Cash, being for the payment out of deceased's Capital	C.B.	2					15000	0	0
" "	" Cash, being for Interest on above £15,000 from Jan. 10th to date, viz., 171 days at 5 % p.a. £351 7 5 Less Tax @ 4s. 70 5 6	C.B.	2		281	1	11			
								15000	0	0

9		DECEASED'S OWN					
Dr.		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, being Assets of business, viz.—						
	Debtors per list ..	£24000					
	Stock-in-Trade ..	35000					
	Bank	1000					
	Fixtures	200					
	Goodwill	5000					
		£65200					
	Less Liabilities per list	5000	J. 1		60200	0	0
June 30	„ Transfer to Widow's Income A/c, being Income up to date of payment of purchase money ..		Led. 17	1128	2	6	
				1128	2	6	60200 0 0

10		LEASEHOLD PROPERTY					
Dr.		Income.			Capital.		
1926.							
Jan. 10	To Estate A/c, being value of 20 cottages subject to a Ground Rent of £50 on Leasehold Land situate 2-40 James St., Manchester; Term of Lease, 999 years from 1st Jan., 1850; Gross Rentals, £400, payable quarterly (all let), valuation by W. Brown		J. 1		2822	4	6
„ „	„ Estate Account, Rents accrued to date of death		„		17	15	6
June 30	„ Cash, being Income Tax for ½ year to April 5th, 1926, @ 4s. on £330. Jan. 10th, 1926, to April 5th, 1926 = 85 days' Income, and April 5th, 1925 to Jan. 10th, 1926, = 280 days' Capital, less £33 paid		C.B. 1	15	7	5	17 12 7
June 30	„ Cash: ½ year's Ground Rent to 30th June £25 0 0						
„ „	Less Tax @ 4s. 5 0 0						
	£20 0 0						
	Jan. 1st-10th = 10 days' Capital, Jan. 10th to June 30th = 171 days' Income		C.B. 2	18	17	11	
„ „	„ Cash, ½ year Interest on Mortg.—£1,000 @ 4 % p.a. £20 0 0						
	Less Tax @ 4s. 4 0 0						
	£16 0 0						
	Jan. 1st-10th = 10 days' Capital; Jan. 10th to June 30th = 171 days' Income		C.B. 3	15	2	4	
„ „	„ Cash: Proportion of Income Tax, April 5th to June 30th (date of sale of the property) = 86 days of 4s. on £330 (=£66 p.a.)		„	15	11	0	
„ „	„ Transfer to Widow's Income A/c, being Income up to date of Sale of the property		Led. 17	123	6	9	
				188	5	5	2859 12 4

BUSINESS ACCOUNT.

		Income.			Capital.		9
							Cr.
1926.							
June 30	By Cash received for sale of the business, which was sold on the figures of the Balance Sheet at the date of death and taken over as from the date of death	C.B. 1			60200	0	0
" "	" Cash, being Interest on above £60,200 @ 5 % p.a. from Jan. 10th to date = 171 days £1410 3 2						
	Less Tax @ 4s. 282 0 8	C.B. 1	1128	2	6		
			1128	2	6	60200	0
							0

ACCOUNT.

		Income.			Capital.		10
							Cr.
1926.							
April 6	By Cash : Being quarter's Rents to 25th March, £100						
	Dec. 25th to Jan. 10th = 16 days' Capital				17	15	6
	Jan. 10th to Mar. 25th = 74 days' Income	C.B. 1	82	4	6		
June 30	" Cash, being quarter's Rents to 24th June	2	100	0	0		
" "	" Cash, being proceeds of sale of this property	"			2700	0	0
" "	" Cash, being Apportionment of Rents, 6 days, June 24th to 30th, say	"	6	0	11		
" "	" Transfer to Debts due at death A/c, being Proportion of Ground Rent, Mortgage Interest and Income tax accrued to date of deceased's death per contra ..	Led. 12			19	12	4
" "	" Transfer to Estate A/c, being Loss on sale of the property, being the difference between the price the property was valued for Estate Duty and the price realized on sale ..	Led. 1			122	4	6
			188	5	5	2859	12
							4

FREEHOLD PROPERTY ACCOUNT

<i>Dr.</i>		Income.				Capital.		
1926.								
Jan. 10	To Estate Account— Value of Deceased's own Freehold Residence, "Crosslands," valued by W. Brown at	J. 1				3500	0	0
						3500	0	0

DEBTS DUE BY

<i>Dr.</i>								
1926.		C.B.						
June 30	To Cash Mortgage paid off	2	1000	0	0			
" "	" Transfer from Leasehold Property Account, accrued charges thereon paid through that A/c	Led. 10	19	12	4			
		C.B.						
April 1	" Cash, Dr. Jones	1	20	0	0			
" "	" Cash, Sundries	"	62	15	2			
						1102	7	6
						1102	7	6

FUNERAL EXPENSES

<i>Dr.</i>								
1926.		C.B.						
April 1	To Cash, Black & Co.	1	50	0	0			
" "	" Cash, Sundries	"	10	0	0			
						60	0	0
" "	" Cash, Rhind & Co., Mourning ..	C.B. 1				20	0	0
" "	" Ramsden & Co., Tombstone ..	"				50	0	0
						130	0	0

(DECEASED'S OWN RESIDENCE).

11

		Income.			Cr. Capital.		
1926.							
June 30	By Transfer to Legacies Account— (This house having been specifically devised to the Widow by the will)	Led. 16					
					3500	0	0
					3500	0	0

DECEASED ACCOUNT.

12

					Cr.		
1926.							
Jan. 10	By Estate A/c, viz.—	J. 2					
	Mortgage on Leasehold Property	2	1000	0	0		
	Interest on ditto accrued	"		17	8		
	Ground Rent on ditto accrued	"	1	2	1		
	Income tax on ditto accrued	"	17	12	7		
	Dr. Jones	"	20	0	0		
	Sundry Household Debts	"	60	7	8		
	Transfer to Estate A/c., excess of actual debts over debts estimated for Estate Duty A/c	Led. 1				1100 2	0 7 0 6
						1102	7 6

ACCOUNT.

13

					Cr.		
1926.							
Jan. 10	By Estate A/c. Amount per Estate Duty Account—	J. 2					
	Black & Co.	"	50	0	0		
	Sundries	"	10	0	0		
						60	0 0
April 1	Transfer to Testamentary Expenses A/c	Led. 15				70	0 0
						130	0 0

BANK INTEREST AND

Dr.		Income.			Capital.		
1926.							
June 30	To Interest on Executors A/c ..	C.B. 3	175	0	0		
1927.	" Charges, being Commission on					15	0 0
" "	cheques drawn for Capital ..	" "					
Jan. 5	" Charges to date of Widow's					52	0 0
" "	death, being Commission on	3					
" "	cheques drawn for Capital ..	" "					
" "	" Charges to date of Widow's		2	0	0		
" "	death, being Commission on	" "					
" "	cheques drawn for Income ..	" "					
			177	0	0	67	0 0
1927.							
Jan. 15	To Charges to date of dividing the	C.B. 4				20	0 0
	Estate						
						20	0 0

TESTAMENTARY AND EXECUTORSHIP

Dr.		Income.			Capital.		
1926.							
April 1	To Cash: Estate Duty 20 % on	C.B. 1				18482	0 0
" "	£92,410 Personalty ..	" "	164	1	1		
" "	" Cash: Interest on Estate Duty						
" "	on Personalty, 4 % p.a. 81 days	" "					
" "	" Cash Estate Duty, 20 % on					700	0 0
" "	£3,500 Realty ..	" "					
July 3	" Cash . Law & Co., Solicitors,	C.B. 3				150	0 0
" "	Costs obtaining Probate ..	" "					
" "	" Cash Adder & Co., Accountants					105	0 0
" "	charges, Opening books, Pre-	" "					
1927.	paring Estate Duty A/c, etc.	" "					
Jan. 15	" Cash: Law & Co., Solicitors,					30	0 0
" "	Costs re Residuary A/c and	C.B. 4					
" "	Winding up Estate ..	" "				21	0 0
" "	" Cash: Adder & Co., Accountants'	Led. 14				67	0 0
" "	charges, Preparing Residuary	" "				15	0 0
" "	A/c, and Winding up A/cs ..	Led. 13				70	0 0
" "	" Transfer, Bank Commission on	" "					
" "	cheques drawn for Capital ..	" "					
" "	Do. do. ..	" "					
" "	" Transfer: Funeral expenses not	" "					
" "	allowed on Estate Duty A/c ..	" "					
			164	1	1	19640	0 0

CHARGES ACCOUNT.

14

			Income.			Cr. Capital.		
1926.								
April 6	By Interest on Deceased's A/c ..	C.B. 1		10	0			
1927.								
Jan. 5	" Interest on Executors' A/c ..	C.B. 3	5	0	0			
" 15	" Income tax recovered ..	" 34	0	0	0			
" "	" Transfer to Testamentary expenses, being charges on Capital	Led. 15				67	0	0
" "	" Transfer to Widow's Income A/c, being Charges on Income	Led. 17	137	10	0			
			177	0	0	67	0	0
1927.								
Jan. 15	By Interest on Executors' A/c to date of dividing the Estate ..	C.B. 4				5	0	0
" "	" Transfer to Testamentary Expenses	Led. 15				15	0	0
						20	0	0

EXPENSES ACCOUNT.

15

			Income.			Cr. Capital.		
1927.								
Jan. 5	By Transfer to Widow's Income A/c.	Led. 17	164	1	1			
" 15	" Interest on Estate Duty ..	Led. 1				19640	0	0
			164	1	1	19640	0	0

Dr.		C.B.	Duty.			Legacies and Devises.		
1926.								
June 30	To Widow, Legacy	2				1000	0	0
" "	" 1 % Legacy Duty thereon ..	"	10	0	0	1000	0	0
" "	" Jas. Brown, Brother's Legacy ..	"	50	0	0			
" "	" 5 % Legacy Duty thereon ..	"						
" "	" National Society for Prevention of Cruelty to Children, Legacy ..	"				1000	0	0
" "	" 10 % Legacy Duty thereon ..	"	100	0	0			
" "	" John Smith, servant, Legacy ..	"				100	0	0
" "	" 10 % Legacy Duty thereon ..	"	10	0	0			
" "	" Jane Brown, sister, Purchase of Government Annuity of £100 per annum	"				2000	0	0
" "	" Jane Brown, Proportion of Annuity of £100 per ann. from deceased's death, Jan. 10th to date of purchase of Annuity, June 30th = 171 days, charged against Capital as directed by the will, £46 17 0, less tax at 4s. ..	"				37	9	7
" "	" 5 % Legacy Duty on £2037 9 7 cost of Annuity to sister ..	"	101	17	6			
" "	" 10 % Legacy Duty on £50, value of Specific Bequest of Picture " The Charmers " to friend, S. Toms	2	5	0	0			
" "	" 10 % Legacy Duty on £50, value of Specific Bequest of Diamond Ring to cousin, S. Brown	2	5	0	0			
" "	" 1 % Legacy Duty on £5,400 value of Specific Bequest of Household Furniture, etc., to Widow	"	54	0	0			
" "	" 1 % Succession Duty on £3,500, value of Specific Devise of De- ceased's Freehold Residence to Widow	"	35	0	0			
" "	" Transfer from Household Furni- ture, etc., A/c, Specific Be- quests, viz.— National Gallery, value of Pic- ture " Moonrise " (free of Leg- acy Duty)	Led. 7				500	0	0
" "	" S. Toms, value of Picture " The Charmers "	"				50	0	0
" "	" S. Brown, cousin, value of Dia- mond Ring	"				50	0	0
" "	" Widow, value of the remainder of Household Furniture, Pictures, Jewels, Plate, Linen, Carriages, Horses, Motors, Apparel, Books, etc.	"				5400	0	0
" "	" Transfer from Freehold Property A/c. Value of Deceased's own Residence specifically devised to Widow	Led. 11				3500	0	0
	Total Duties					370	17	6
						15008	7	1

DEVISES ACCOUNT.

16

Cr.

[illegible]

17

THE LIFE TENANT'S (WIDOW'S)

Dr.

1927.			Led.							
Jan. 5	To Transfer from Bank Interest ..	14	137	10	0					
" 15	" Interest on Estate Duty ..	15	164	1	1					
" 15	" Cash: Widow— ..	C.B. 3								
	Balance	£2429 14 11								
	Less 1 % Legacy									
	Duty on Life Interest 24 5 11		2405	9	0					
" "	" Cash. Legacy Duty on Widow's									
	Life Interest	4	24	5	11					
						2731	6	0		
						2731	6	0		

18

RESIDUARY LEGATEE
(MARY BROWN,

Dr.

1927.										
Jan. 15	To Cash, payment to her of one-									
	third share of Residue, per									
	contra, viz., £20002 3 3									
	Less 1 % Legacy									
	Duty ..	200 0 5	C.B. 4	19802	2	10				
" "	" Cash, Legacy Duty on Residue		"	200	0	5				
							20002	3	3	
							20002	3	3	

19

RESIDUARY LEGATEE
(HELEN BROWN,

Dr.

1927.										
Jan. 15	To Cash, payment to her of one-									
	third share of Residue, per									
	contra, viz., £20002 3 3									
	Less 1 % Legacy									
	Duty ..	200 0 5	C.B. 4	19802	2	10				
" "	" Cash, Legacy Duty on Residue..		"	200	0	5				
							20002	3	3	
							20002	3	3	

20

RESIDUARY LEGATEE
(THE SAMARITAN

Dr.

1927.										
Jan. 15	To Cash, payment to the Society of									
	one-third share of Residue per									
	contra, viz., £20002 3 3									
	Less 10 % Legacy									
	Duty ..	2000 4 4	C.B. 4	18001	18	11				
" "	" Cash, Legacy Duty on Residue..		"	2000	4	4				
							20002	3	3	
							20002	3	3	

INCOME ACCOUNT.

17

Cr.

1927.										
Jan. 5	By Transfer from—	Led.								
	Consols A/c	2	1179	16	11					
	A. B. Co., Ltd.	3	18	17	11					
	X. Y. Z. & Co.	8	281	1	11					
	Purchaser of Deceased's business	9	1128	2	6					
	♦ Leasehold Property	10	123	6	9					
						2731	6	0		
						2731	6	0		

ACCOUNT.
DAUGHTER.)

18

Cr.

1927.										
Jan. 15	By Transfer from Estate Account, being one-third share of the Residue divided, in accordance with the will, on the death of the Life Tenant.. ..	Led.								
		1				20002	3	3		
						20002	3	3		

ACCOUNT.
DAUGHTER.)

19

Cr.

1927.										
Jan. 15	By Transfer from Estate Account, being one-third share of the Residue divided, in accordance with the will, on the death of the Life Tenant.. ..	Led.								
		1				20002	3	3		
						20002	3	3		

ACCOUNT.
SOCIETY.)

20

Cr.

1927.										
Jan. 15	By Transfer from Estate Account, being one-third share of the Residue divided, in accordance with the will, on the death of the Life Tenant.. ..	Led.								
		1				20002	3	3		
						20002	3	3		

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THE RESIDUARY ACCOUNT

The residuary account would be prepared and rendered to the Inland Revenue on Form 3 for the purpose of payment of the legacy duty on the residue.

If it is assumed in the foregoing estate that the account was rendered immediately after the life tenant's death, the following is how it would be rendered—

Form No. 3.	RESIDUARY ACCOUNT.			Col. No. 1	Col. No. 2		
Description of Property.	Nominal Value of Stocks.		Market price of Stocks	Date of sale if Sold.	Money received and property converted into money		Value of property not converted into money.
	£	s. d.			£	s. d.	£ s. d.
Stocks or Funds of the United Kingdom, viz., 2½ % Consols (left by deceased)	7090	18 2	55	1927 Jan. 10	59711	7 4	
Do. (Purchased by Executors)	104000	0 0	55	"			
Proprietary Shares, etc., of Public Companies, viz.: 100 £10, 5 % Preference Shares in A. B. Co., Ltd.	1000	0 0	par	1926 July 21	1000	0 0	
Dividends and interest in respect of above investments to date of death, viz.— 5 days' interest on £7,090 18 2 Consols Jan. 5th to 10th 1927 ½ year's div. to Dec. 31st, 1925, on £1,000, 5 % A. B. Co., Ltd. 20 0 0 10 days' div. to Jan. 10th, 1926, on £1,000, 5 % A. B. Co., Ltd. 1 2 1							
Cash in the house					30	0 0	
" at Bankers. On private % at date of death					100	0 0	
Cash at Bankers. On business % at date of death					1000	0 0	
Book debts of deceased's business					24000	0 0	
Policy of insurance and bonuses thereon, on life of deceased					5000	0 0	
Furniture, plate, linen, china, books, pictures, apparel, jewels, ornaments, horses, carriages, etc., per valuation for estate duty							6000 0 0
Stock-in-Trade of deceased's business					35000	0 0	
Carried forward					125864	8 10	6000 0 0

	£	s.	d.	£	s.	d.
Brought forward ..	125864	8	10	6000	0	
Goodwill of deceased's business (price realized) ..	5000	0	0			
Deceased's share in real and personal property as a partner in the firm of X. Y. Z. & Co., per Balance Sheet ..	15000	0	0			
Leasehold property (20 Cottages) ..	2700	0	0			
Real property (specifically devised to widow) (as valued for estate duty)				3500	0	0
Rents of leasehold property (to date of death) ..	17	15	6			
Other property, viz.—Fixtures of deceased's business ..	200	0	0			
Insert total of col. No. 1 in col. No. 2 ..				148782	4	4
Payments.						
Estate duty at 20% on £92,410 Personalty and £3500 Realty	19182	0	0			
Funeral Expenses viz.—						
Black & Co., Undertakers ..	£50	0	0			
Registrar and Cemetery fees, etc. ..	10	0	0			
Rhind & Co., Mourning ..	20	0	0			
Ramsden & Co., Tombstone ..	50	0	0			
	130	0	0			
Expenses attending executorship, viz.—						
Law & Co., Solicitors' costs re probate ..	150	0	0			
Adder & Co., Accountancy charges re Estate duty opening books ..	105	0	0			
Law & Co., further costs re residuary %, etc. ..	30	0	0			
Adder & Co., further accountancy charges, re residuary % ..	21	0	0			
Bank charges on cheques drawn for capital ..	82	0	0			
	388	0	0			
Debts due at death viz.—						
Interest on Mortgage accrued ..	17	8				
Ground rent leasehold property accrued ..	1	2	1			
Income tax on leasehold property accrued ..	17	12	7			
Dr. Jones, Medical attendance ..	20	0	0			
Sundry household %s due at death, per statement annexed ..	62	15	2			
	102	7	6			
Mortgage debt on leasehold property ..	1000	0	0			
Liabilities of deceased's own business per statement annexed ..	5000	0	0			
Legacies, annuities and devises, and duties paid thereon.						
Pecuniary Legacies, viz.—						
	Legacy.			Duty.		
Widow, Mary Brown ..	£1000	0	0	£10	0	0
Brother, James Brown ..	1000	0	0	50	0	0
Nat. Socy. Prevention of Cruelty to Children ..	1000	0	0	100	0	0
Servant, John Smith ..	100	0	0	10	0	0
	3100	0	0	170	0	0
Annuity purchased for sister, Jane Brown ..	2037	9	7	101	17	6
				2139	7	1
Specific Legacy, viz., Value of picture, "Moonrise," to National Gallery ..						
	500	0	0	No duty payable.		
Specific Legacy, viz., Value of picture, "The Charmers," to friend, S. Toms ..						
	50	0	0	5	0	0
Carried forward ..	550	0	0	5	0	0
				31211	14	7
				158282	4	4

	£	s.	d.	£	s.	d.
Brought forward	550	0	0	5	0	0
Specific Legacy, viz., Value of diamond ring to cousin, T. Brown	50	0	0	5	0	0
Specific Legacy, viz., Value of Furniture, etc., to Widow	5400	0	0	54	0	0
Specific Legacy, viz., Value of Freehold residence to Widow	3500	0	0	35	0	0
	£9500	0	0	£99	0	0
Investments purchased by the Executors, viz.—						
£104,000 of 2½ % Consols purchased 2nd July, 1926, at 55 % cost	57465	0	0			
Total payments to be deducted from total property ..					98275	14 7
Net amount of property on Capital Account.. ..					£60006	9 9
Interest, dividends, rents, etc., received since death on Income Account—						
Rents of Leasehold property to date of sale (viz., 30th June, 1926)	188	5	5			
Dividends on 2½ % Consols to date of sale	1179	16	11			
Interest received on purchase price of deceased's business share as "partner in X. Y. Z." & Co. "	1128	2	6			
Interest received on cash in the bank to date of this account	281	1	11			
Dividend received on £1,000 5 % Pref. Shares in A. B. Co., Ltd., to date of sale	39	10	0			
	18	17	11			
Total income to date of this account	£2835	14	8			
Payments out of Income.						
Payments on % of leasehold property viz.—						
Income Tax 10th Jan. to 5th April, 1926	15	7	5			
Ground Rent to date of Sale	18	17	11			
Mortgage Interest "	15	2	4			
Income Tax "	15	11	0			
Interest paid on bank overdraft	175	0	0			
Bank charges, commission, etc.	2	0	0			
Interest on Estate duty on personalty	164	1	1			
	405	19	9			
Net Income to date of this account all due to the Widow who is the Life Tenant	£2429	14	11			

Legacy duty would be assessed and paid on the residue as shown by the foregoing account, as follows—

Residue on Capital Account	£60006	9	9
Two-thirds to the children of testator =	£40004	6	6
@ 1% =	£400	0	10
One-third to the Samaritan Society =	£20002	3	3
@ 10% =	2000	4	4
Residue on Income Account all to the widow	2429	14	11
@ 1% =	24	5	11
Total legacy duty payable on the residuary account	£2424	11	1

In the foregoing example, the only item in the residuary account which differs from the account rendered for estate duty for which a corrective affidavit

for the purpose of adjusting the estate duty paid on the first account, is the difference of £2 7s. 6d. in the debts due at death, which is not of sufficient importance to necessitate a corrective affidavit.

As will be seen from the ledger accounts of the residuary legatees, the legacy duty payable on the residue is deducted from their respective shares at the rates for which they are respectively liable.

CHAPTER X

THE PUBLIC TRUSTEE ACT, 1906

By this Act the office of Public Trustee was first established. The office is held by an official of the State, with power to act—

(a) As trustee in the administration of small estates.

(b) As a custodian trustee.

(c) As an ordinary trustee.

(d) As a judicial trustee.

(e) As Administrator of the property of a convict under the Forfeiture Act, 1870.

Section 5 of this Act reads as follows, and explains itself—

“The Public Trustee may, by that name, or any other sufficient description, be appointed to be trustee of any will or settlement or other instrument creating a trust or to perform any trust or duty belonging to a class which he is authorized by the rules made under this Act to accept, and may be so appointed whether the will or settlement or instrument creating the trust or duty was made or came into operation before or after the passing of this Act, and either as an original or as a new trustee in the same case, and in the same manner, and by the same persons or court, as if he were a private trustee, with this addition, that, though the trustees originally appointed were two or more, the Public Trustee may be appointed sole trustee.”

Anyone therefore, instead of appointing a private individual as trustee under his will, may nominate

the Public Trustee, who will have the same powers as a private trustee would have. One of the advantages derived from appointing the Public Trustee is that the State is liable for his acts and dealings with the estate.

The Public Trustee will not accept any trust where the carrying on of a business is involved, except where it is being carried on merely with a view to selling or winding up.

Provision is made under this Act whereby any trustee or beneficiary may, on application, have the accounts of any trust investigated and audited by a solicitor or public accountant to be agreed upon by the applicant and the trustees, or, in default of agreement, by the Public Trustee or someone appointed by him.

For further particulars regarding the Public Trustee and his powers and duties, the reader is referred to the Act itself.

ADDENDUM

APPORTIONMENT. (*Howe v. Lord Dartmouth*. Page 64.)

A striking illustration of the difficulty of preparing a new edition of a book of this character at the present time, in consequence of the alterations in the law of property made by recent enactments, is afforded by the case of *re Brooker's Trusts*; *Brooker v. Brooker*, which has come before the Court since the final proofs of this book were revised. The following is a summary of this case, from which it would appear that application of the rule in *Howe v. Lord Dartmouth* will be considerably limited in future—

The testator, who died on the 6th May, 1903, by his will dated the 8th December, 1898, gave his residuary estate to trustees upon trust for sale, with power to postpone. The testator gave the net proceeds of sale to his children in equal shares, and settled the shares of daughters upon trust for each daughter for life, and then for her children. The will contained no express investment clause, no express power to retain any part of the estate as invested at the death, and no express disposition of rents and profits until sale. The testator's estate comprised (among other property) six blocks of leaseholds held for terms of years varying at his death from thirty to eighty-four years, the greater part of which remained unsold at the date of this summons. The trustees, in accordance with the rule in *Brown v. Gellatly*, had from the testator's death capitalized part of the rents of the leaseholds in respect of the settled shares. The trustees paid to the daughters as tenants for life an agreed rate of $3\frac{1}{2}$ per cent on their shares of the aggregate probate values of the leaseholds retained unsold, and capitalized the balance. The trustees took out this summons for the determination of several questions arising as to the trust estate, of which the only one calling for notice raised the question of the effect of the Law of Property Act, 1925, upon the rule in *Howe v. Lord Dartmouth* and *Brown v. Gellatly*. Section 28 of the Law of Property Act, 1925, provides by sub-sect. (2) that, subject to any disposition to the contrary in the disposition on trust for sale, or in the settlement of the proceeds of sale, the net rents and profits of the land until sale, after keeping down costs of repairs and insurance, and other outgoings, should be paid or applied, except so far as any part thereof might be liable to be set aside as

capital money under the Settled Land Act, 1925, in like manner as the income of investments representing the purchase money would be payable or applicable if a sale had been made and the proceeds had been duly invested ; and by sub-sect. (5), Section 28 was applied to dispositions on trust for sale coming into operation either before or after the commencement or by virtue of the Act. The definition section, Section 205 (1) (ix), so far as material, is as follows—" Land " includes land of any tenure.

Held, that the definition of land in the Act was a general definition, and included leaseholds : that under sub-sect. (5) of Section 28, the provisions of sub-sect. (2) of Section 28 applied to the will of a testator who died before 1926, and that as from the coming into force of the Law of Property Act, 1925, the principle laid down in *Howe v. Lord Dartmouth* hitherto applied by Courts of Equity during the period of the postponement of the sale of leaseholds held on trust for sale, was no longer applicable to a case like the present, and the tenants for life were accordingly entitled to the whole of their shares of the rents and profits of the leaseholds. (*Law Times*, volume 161, pp. 213-14.)

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